42

99487
4684 D.L.

United States Legation,
Japan,
Tokei. April 9, 1880.

DEPARTMENT OF STATE
MAY
11
1880
RECEIVED

No 42
April 1. 1880
~~July 30, 1880~~
July 31. 1880
Japan
Bingham
1095

cts,
State,
n. D.C.

honor to transmit
my account for
arter ending the

he honor to be,
Sir,
bedient servant,
D. W. Stevens
Secretary of Legation.

42

99487
4684 O.L.

United States Legation,
Japan,
Tokei. April 9, 1880.

DEPARTMENT OF STATE
MAY
11
1880
RECEIVED

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

I have the honor to transmit herewith statement of my account for salary for the Quarter ending the 31st ultimo.

I have the honor to be,
Sir,
Your obedient servant,
D. W. Stevens
Secretary of Legation

No 1095.

DEPARTMENT OF STATE
MAY
11
1880
RECEIVED

United States Legation,

Japan,

Tokei, April 9, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

Two passports issued during the Quarter ending March 31, 1880, to Miss Lizzie MacManus and Mr Peter T. Dickinson, respectively.

No 1095.

United States Legation,
Japan,
Tokei, April 9, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

I beg leave to report that during the Quarter ended the 31st ultimo there have been issued from this Legation two (2) passports to citizens of the United States towit: to Miss Lizzie Macadams and to Mr Peter T. Dickinson, his wife Hester A. and his daughter Mabel.

These passports were issued upon

upon the affidavits of the respective parties of their citizenship unbroken and continued allegiance to the United States, and which affidavits are in the form prescribed by the "Personal Instructions" issued by the Department. The statutory fee of five dollars ($5.00) was received in each case by me and debited to myself in my Quarterly account for Contingencies as shown in my No 1096 of this date.

I have the honor to be,

Sir,

Your obedient servant,

Jno A Quigley

No 1096.

DEPARTMENT OF STATE
MAY
11
1880
RECEIVED

United States Legation,
Japan,
Tokei, April 9. 1880.

Mr Bingham
to the
Hon. Secretary of State.

Subject.

Accounts for the Quarter ended March 31, 1880. Mr Bingham drew in advance on the Contingent fund, on the 5th April, for £35-19-2.

Enclosures.

Statement of account, with Exchange Certificate.
Abstract of Contingent Expenses with Vouchers.

No 1096.

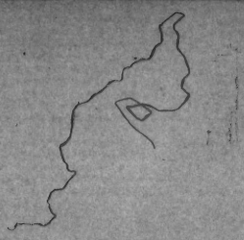
United States Legation,
Japan,
Tokei, April 9, 1880.

Hon William M. Evarts,
Secretary of State,
Washington, D.C.

Sir:

Herewith I have the honor to enclose my account, with vouchers, for salary and contingent expenses for the Quarter ended the 31st ultimo. You will please observe that in accordance with your Instruction No 474 of date the 23d of December last, I have in my account for salary debited myself with three hundred and twenty eight

eight 75/100 dollars ($328 75/-) equal to £67-11-1, additional to the amount deducted from my salary in my account rendered in my No 914 for salary by reason of a visit to the United States on leave in 1878 and 1879. I have, as I suggested in my No 1076 it was my purpose to do, drawn on Messers Morton, Rose & Co on account of salary for the last Quarter only for £ 548-18-1, equal to Two thousand six hundred and seventy one 25/100 dollars ($2671 25/-), and have received for said bill the equivalent in United States gold, the sum of Two thousand six hundred and seventy one 25/100 dollars ($2671 25/-) and no more, as shown by the enclosed certificate of the Agent of the Oriental Bank Corporation



ration, Yokohama.

I have been compelled to draw in advance, in accordance with your instructions, for the current Quarter, on account of contingencies, on the 5th instant, for £35-19-2, for which draft I will account at the close of this Quarter.

My account for contingencies for the last Quarter is One hundred and ninety three/100 dollars ($193.00), as shown by the enclosed vouchers. My contingent draft for the last Quarter dated the 17th January last was for £35-19-2, for which sum I received the equivalent of One hundred and seventy five dollars ($175.00) United States gold and

no

no more, as shown by the enclosed certificate of the banker.

Referring to my account for contingencies, as shown by my No 1063, for the Quarter ended the 31st of December last, you will observe that I was then constrained to draw in advance upon the contingent fund for the Quarter ended the 31st of March 1880. All this is owing to the unusual expense of public notifications given by me of the law of this Government in relation to a quarantine against Asiatic Cholera and the increased postage charges in forwarding packages transmitted by the Department to me for our several Consuls in Japan, HongKong, Siam &c.

My accounts for salary

and

and contingent expenses, as shown by the statement and vouchers herewith, show a balance of One hundred and seventy three $^{11}/_{100}$ dollars ($173.11) (on account of contingent expenses) in my favor, which balance is covered by my draft of the 5th instant on Messrs Morton, Rose & Co above mentioned, for which I will render account at the end of the Quarter.

I have the honor to be,
Sir,
Your obedient servant,
Mc a. Bingham

P.S. — Please note that in my account for salary the Three hundred and twenty eight $^{75}/_{100}$ dollars ($328.75) deducted therefrom represents ten days

days of absence in 1878-79 additional to the seven days deducted from my salary for the Quarter ended June 30, 1879. as shown by my No 917.

Jno. A. Rinyhart

Referred to the Chief Clerk to consider if there is any necessity for this extra allowance under the present mail arrangements. E. P.

No 1097.

Mr Ward & Gr Aden



Ans'd 18 May & unclosed

United States Legation,

Japan,

Tokei, April 9, 1880.

Mr Bingham

to the

Hon. Secretary of State.

Subject.

Suggesting that the Legation contingent fund be increased One hundred dollars per annum on account of the additional expense entailed in the transmission of mails &c. to Consulates in the East.

No 1097.

United States Legation,
Japan,
Tokei, April 9. 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

Referring to my No 1096, I beg leave to suggest that the present contingent appropriation for this Legation should be increased to the amount of at least One hundred dollars per annum, to enable me to pay the additional contingent expenses of the Legation in transmitting the Department correspondence, packages of stationery, books &c.

books &c. to our several Consuls in Japan, China, HongKong, Siam &c., which are by the next arrangement transmitted to this Legation in the mail pouches and forwarded by me under your Instructions to our Consuls in those several Countries.

I have the honor to be,

Sir,

Your obedient Servant,

Jno. A. Bingham

No 1098.



United States Legation,
Japan,
Tokei, April 12, 1880.

Mr Bingham
to the
How Secretary of State.

Subject.

Receipt of Instructions 486, 487, 488, 489, 490 and 491. The enclosure with 488 not received.

No 1098.

United States Legation,
Japan,
Tokei, April 12, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

I have the honor to acknowledge the receipt of Instructions numbered, respectively, 486 (with enclosure) 487, 488, 489, 490 and 491 (with enclosure).

Referring to No. 488 I beg leave to say that the enclosures therein mentioned viz: a copy of a communication, with two enclosures, from Messrs

H.

H. Fogg and Co of New York were omitted to be forwarded with the Instruction and consequently have not been received by me.

I have the honor to be,

Sir,

Your obedient servant,

Jn° A. Bingham

Ack'd. approving May 17. 1880. Mr Caldwell

Ack + approve C. P. Made

No 1099.



United States Legation,

Japan,

Tokei. April 12, 1880.

Mr Bingham

to the

Hon. Secretary of State.

Subject.

Reply to Instruction No 486. Mr Bingham has called the attention of the Minister for F.A. and the Minister of Finance, verbally, to the injustice proposed to be done in the new duties to American interests by the heavy duty upon Kerosene, and will protest in writing to the former.

No 1099.

United States Legation,
Japan,
Tokio, April 12, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

Referring to Instruction No 486 and its enclosure in relation to the changes proposed to be made, as reported in my No 1038, in the rates of duties upon imports into Japan, I beg leave to refer you to my No 1074, of date the 9th of February last, in which I had the honor to enclose duplicate copies of an additional and later project for a change of the existing rates of duties upon

upon imports into Japan; and in which despatch I acquainted you that I had called the attention of the Japanese Minister for Foreign Affairs and also of the Japanese Minister of Finance to the excessive duties sought to be levied by the proposed revision upon Kerosene oil. In the representations made by me on the occasions referred to in my No 1074 I especially pointed out to the two Ministers that as the United States was the largest purchaser of Japanese productions and the sole producer of kerosene, and had been the only foreign state which had assented to the request of His Imperial Japanese Majesty's Government to restore to it the control of its revenues, it seemed to me to be

alike

alike unwise and unjust for Japan to propose to lay upon this American production twenty per cent duty, while upon the chief importations of Great Britain but ten per cent duty was proposed to be laid.

His Excellency Mr Inouye, the Minister for Foreign Affairs, having called upon me today, I took occasion to say to him that very recently I had received special instruction to protest on behalf of the United States against this proposed unfriendly action against our commercial interests in Japan, and added that I would at an early day communicate with him on the subject in writing. The Minister

said

said that the rates published were not yet finally agreed upon by his Government and that he would give consideration to what I had said.

It is to be hoped that this Government will not consent thus to offend against the power which above all others has manifested a friendly regard for it and has been and is the largest purchaser of the domestic productions of Japan.

I will at an early day not only protest to the Foreign Office, in accordance with your instructions, against the proposed injustice, but I will also take occasion to verbally

call

call the attention of His Majesty's other Ministers to the matter.

I have the honor to be,

Sir,

Your obedient servant,

Jno. A. Bingham

Ack

Trade

No. 1100.



United States Legation,

Japan,

Tokei, April 13, 1880

Mr. Bingham

to the

Hon. Secretary of State.

Subject.

Transmission of the "Monthly Return
"of His Imperial Majesty's Customs of
"Japan for the month of February 1880."

Enclosures.

Duplicate Copies of the Customs Report
for February 1880.

No. 1100.

United States Legation,
Tokei, Japan,
April 13, 1880.

Hon. William M. Evarts,
Secretary of State,
Washington D. C.

Sir:

Herewith I have the honor to enclose in duplicate for your information the "Monthly Return of His "Imperial Majesty's Customs of Japan for "the month of February 1880."

By the abstract (p. 9.) of imports and exports for the month it appears that the former were valued at yen two million three hundred and twenty five thousand three hundred and five, and seventy

three "sen". (2,325,305. 73/100.) and the latter at yen one million eight hundred and nine thousand five hundred and two, and eighty six "sen". (1,809,502. 86/100) showing an excess of imports to the amount of yen five hundred and fifteen thousand eight hundred and two and eighty seven "sen". (515.802. 87/100).

It also appears (p. 9.) that the export of specie and bullion for the month was in excess of the import thereof for the same time to the amount of yen one million one hundred and eighty nine thousand seven hundred and seventy one, (1,189,771. 00/100).

I have the honor to be,

Sir,

Your obedient servant,

Jno A. Bingham

Ack.

made

No. 1101.



United States Legation,
Tokei, Japan,
April 13. 1880.

PRINTED.
FOREIGN RELATIONS
1880

Mr. Bingham
to the
Hon. Secretary of State.

Subject
The Imperial decree regulating political meetings and societies.

Enclosures.
Duplicate copies of the decree - from the Japan Daily Mail, April 10, 1880.

No. 1101.

United States Legation
Tokei, Japan,
April 13. 1880.

Hon. William M. Evarts,
Secretary of State
Washington D. C.

Sir:

This government on the 5th. instant issued an Imperial decree for the regulation of political meetings & associations which has excited some unfavorable comment in the foreign and native public journals of the Empire.

I have the honor to enclose for your information copies in

duplicate of a translation of this decree as published in the "Japan Mail" of the 10th instant. It is therein provided that no political meetings shall be held for the discussion of political subjects nor shall any political association be organized until permission shall have been first obtained from the police. It is also provided that persons belonging to the Army or Navy, or persons of the 1st and 2d reserves or public officers or professors or Students in the government service, or in the public or private schools or students in the schools of Art and Agriculture shall not be permitted to attend or become

members of political societies
or to attend political meetings
or lectures. Political societies
are prohibited from advertising
the subjects of lectures or debates,
and from issuing or sending out
agents or circulars to influence
the public to attend their meetings,
and from communicating with
each other. All such political meet-
ings may be dispersed by order of the
police. Penalties are prescribed
for all violations of the regulations.
It is said that these restrictions are needful
for the good order and peace of the Empire.

I have the honor to be,

Sir,

Your obedient servant,

Wm. A. Burlingame

No. 1101.

Enclosure.

Extract from the Japan Daily Mail,

April 10, 1880.

THE NEW REGULATIONS RESPECTING POLITICAL MEETINGS OR SOCIETIES.

(Came into force on the 6th of April, 1880.)

1.—If anyone shall desire to give a lecture on political subjects, or assemble a meeting to debate such subjects, the promoter, president or manager, shall three days at least before the lecture is to be given or meeting held, send in an application to the nearest police station for permission. Every such application shall state the subjects of the lecture or debate, and the names and addresses of the lecturers or speakers.

2.—Every person desirous of forming a political society, shall before doing so, make application for permission at the nearest police station. Every such application shall give the name of the proposed society, the rules for its government, the place of meeting of the society and the names of the members. Any alterations in the rules of the society or in the members, after the establishment of the society has been authorised, shall be reported to the police authorities, who shall at all times have power to make such inquiries as they may deem expedient, respecting the affairs of the society.

3.—After the establishment of a society has been once authorised, three days' previous notice of the first meeting must be given at the nearest police station. After the first meeting has been held, it shall not be necessary to give notice of the subsequent regular meetings, but any alterations must be notified as provided in article number 1 of these regulations.

4.—Whenever the police authorities consider that granting the applications referred to in the three preceding articles would be prejudicial to the interests of the public, they may decline to do so.

5.—Police officers in uniform, shall have power to visit all lectures or meetings, and demand the production of the license to hold same.

6.—If the license shall not be produced when demanded, or if any subject not specified in the report shall be lectured upon or discussed, or if the lecture or debate is considered prejudicial to the public interest, or liable to incite the hearers to commit offences against the laws, or if persons are in attendance who ought not to have been admitted, and who refuse to leave when requested to do so, then and in every such case it shall be lawful for the police officers to close the meeting.

7.—The following persons are forbidden to attend or take part in political lectures or meetings, or to become members of political societies:—Men belonging to the Army or Navy, the first and second reserves, police officers, professors and students in government, public, or private schools, and students in the schools of Art and Agriculture.

8.—Every political society is prohibited from advertising the subject of its lectures or debates, or sending out agents or circulars to induce the public to attend its meetings. The combination of one society with another, and all communication between societies, is strictly forbidden.

9.—Open-air lectures or debates upon political subjects are hereby prohibited.

10.—If any lecture shall be given or meeting held, without the permission mentioned in article 1 being first obtained, the promoter of the lecture or meeting shall be liable to a fine not exceeding twenty and not less than two yen, or to imprisonment not exceeding three months and not less than eleven days. The person who lent or rented the place of meeting, the president, manager, lecturers and speakers, shall severally be liable to a fine not exceeding twenty and not less than two yen, and every breach of article 3 shall be punished in like manner.

11.—For every breach of the provisions of article 2, the president of a society shall be liable to a fine not exceeding twenty and not less than two yen. If false regulations or fraudulent lists of members of a society are forwarded to the police authorities, or incorrect answers returned to questions asked, the president of the society shall be liable, in addition to the monetary penalty hereinbefore provided, to imprisonment not exceeding three months and not less than eleven days.

12.—If a police officer is refused admission to any lecture or meeting, contrary to article 5, the promoter of the lecture or meeting, the president and the manager, shall each be liable to a fine not more than fifty and not less than five yen, or to be imprisoned not more than one year and not less than one month. Every person who refuses to answer questions, or returns false answers, respecting any lecture or debate, shall be liable to a similar punishment to that hereinbefore mentioned. In the event of any person being guilty of a similar offence a second time, he shall be liable to a fine not exceeding one hundred and not less than ten yen, or to be imprisoned not more than two years and not less than two months.

13.—When the persons assembled at any meeting are ordered to disperse, everyone refusing to do so shall be liable to a fine not exceeding twenty and not less than two yen, or to be imprisoned for not more than six months and not less than eleven days.

14.—For every breach of article number 7, the conductors and president of a meeting, or the president and officers of a society, will be severally liable to a fine not exceeding twenty and not less than two yen, or to be imprisoned for not more than three months and not less than eleven days. If the offence committed shall be considered aggravated, the society may be suppressed altogether, and should any persons persist in holding a meeting after being prohibited from doing so, they shall each be liable to a fine not exceeding twenty and not less than two yen.

15.—For every breach of article number 8, the promoter of a meeting, the manager and president, and the president and officers of a society, shall each be liable to a fine not exceeding fifty and not less than five yen, or to be imprisoned not more the one year or less than one month. In addition, the society will be suppressed, and all persons found implicated in a breach of the said article will be liable to a similar punishment to that hereinbefore provided. Any person who shall compel another to join a society, or who has been previously convicted for a breach of article number 8, shall be liable to a fine not exceeding one hundred and not less than ten yen, or to be imprisoned for not more than two years and not less than two months. The president and director shall also be prohibited from forming or joining any other society for a term of not more than five years or less than one year.

16.—The foregoing regulations do not extend to meetings held in accordance with established custom.

Middle

The address has been read with interest & is regarded as an indication of a desire for a more enlightened institutions and perhaps a more liberal form of government

No 1102.

Rec'd & noted May 22. 1880 Mr Caldwell



United States Legation,

Japan,

Tokei, April 13, 1880.

PRINTED.
FOREIGN RELATIONS
1880

Mr Bingham

to the

Hon. Secretary of State.

Subject.

The Emperor addresses the assembly of provincial Governors. He contrasts the condition of Japan before and since the restoration, and declares that it has been his constant endeavor to promote the interests of the people &c.

Enclosure.

Translation of the Emperor's address.

F. R.

No 1102.

United States Legation,
Japan,
Tokei, April 13, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

Herewith I beg leave to enclose for your information a translation of the significant address which His Majesty the Emperor of Japan made on the 25th ultimo to the provincial Governors of the Empire. His Majesty remarks that upon his accession to the throne in 1868 "the general government was re-established" and that

that "the feudal system of Gov=
"ernment was immediately abol=
"ished". At that day and for
centuries before the provinces of
the several feudal lords or dai=
mios were military encampments
numbering hundreds of thousands
of trained soldiery enforcing the
orders of their several Chiefs,
who were the Government in fact
and rulers of the country.
The Emperor declares that it has
been his constant endeavor "to
"establish order and promote the
"welfare of the country and the
"interests of the people".
His Majesty assigns the provincial
administration exclusively to the
several Governors and directs them

to

to second his endeavors to promote the cause of progress "gradually".

It seems that the Emperor intends that the people shall hasten slowly towards a Constitutional and representative government.

I have the honor to be,

Sir,

Your obedient servant,

M: A. Burlingame

No 1102. Enclosure.

~~Enclosure No.~~

Translation from the "Hochi Shimbun" of March 25th 1880.

We have had the good fortune to obtain a copy of His Majesty the Emperors address, which we have heard was sent down to the Kwan, Sho, and Shi where it was made known to the officials on the 22d instant. The address is as follows: Ed.

To day, when I have the pleasure of feasting with you, the provincial officials, I have a matter to communicate to you. When I first ascended the throne, by the awe-inspiring spirit of my ancestors the general government was re-established, the feudal system of government immediately abolished and an extensive

and remarkable revolution effected
When I was still young, but with you
my officials I have labored early and
late till now only to promote the wel-
fare of the country and the interests
of the people. All that you have
accomplished during several years
in gradually marking out the foun-
dations for established order is so
much done towards the attaining
of my prime object. To take a
resumé; since the revolution we
have reached the beginnings merely
of many enterprises for the public
good, but there is much still beyon
us yet unattained. The people have
recently ceased from war; educa-
tion is not yet universal. Many
of the educated in the armed class

are without an occupation, and most of the farmers and merchants who have the means of living are ignorant; as you all know. What I and you the officers of my court should thoroughly ponder, profoundly consider and seek to promote is the gradual progress and improvement of the government of the country. You provincial officials know the desires of the people and will doubtless express to them my mind. The provincial administration I commit entirely to you. You are to lead those that are without employment to take up some occupation. Those of the farmers and merchants who are uneducated you are to mould so as to increase their intelligence

Those of the people who are addicted to political discussion without understanding the whole subject and who are hence liable to rush into outbreaks you are to instruct and warn so that they make no mistakes. In fine, you are to observe your instructions, inspect and succour the people and second any endeavor to promote the cause of progress gradually.

Copy to Treasury 24. 1880.
May Caldwell

Ack – copy to Secretary of Treasury

W Adee

No 1103.



United States Legation,

Japan,

Tokei, April 14, 1880.

Mr Bingham

to the

Hon. Secretary of State.

Subject.

Enclosing reply of the Japanese Government to the interrogatories of the Secretary of the Treasury (forwarded in separate Instruction of Feby. 11, 1880) concerning the gold and silver coinage of Japan, the amount of precious metals in the country &c. &c.

Enclosure.

Translation of reply to the interrogatories

No 1103.

United States Legation,
Japan,
Tokei, April 14, 1880.

Hon William M. Evarts,
Secretary of State
Washington D.C.

Sir:

Referring to Instruction dated Feby 11th, marked "special and separate," in relation to certain interrogatories propounded by the Honorable the Secretary of the Treasury, I beg leave to acquaint you that in reply to a note addressed by me to the Foreign Office, requesting answers to the said interrogatories, I received on the 31st ultimo a communication

from

from His Excellency Mr Inouye, the Minister for Foreign Affairs, enclosing answers in the Japanese language, a translation of which I have the honor to enclose herewith.

I apprehend that these answers, together with my despatches to the Department numbered, respectively, 996 and 1050, will furnish all the accurate information now obtainable of the existing laws of this Empire regulating the coinage of money in Japan &c. &c.

You will observe that Mr Inouye omits to furnish a statement showing the amount of each kind and denomination of money coined since 1800, but has reported only for the two years

years past. The reasons of this omission is given on page 11 of the enclosed report as follows:-
"the statistics for previous years
"are not given because some
"points necessary to a complete
"view are not ascertainable".

I trust that the report made may be satisfactory to the Honorable the Secretary of the Treasury and to you.

I have the honor to be,

Sir,

Your obedient servant,

Wm. A Bingham

No. 1103.

Enclosure.

Translation

Reply to Inquiries made by the Government of the United States.

I. The amounts of gold-coin, and gold-bullion in the Treasury, in banks, and in circulation in Japan are, severally, as follows:

1st Amount on hand June 30, 1878.

Gold-coin in Treasury 10, 764, 420. 123/1000 yen*

" " " banks, 211, 326. 113/1000 yen.

" " " circulation, 95, 123, 378. 402/1000 "

Gold bullion in Treasury, 3, 550. 23/100 Oz.

" " " banks, 1, 454. 04/100 "

" " " hands of the people 000 "

* "Yen" equal to one U. S. dollar.

Total of gold-coin, 106,099,125 $\frac{717}{1000}$ yen.
Of the above sum $\frac{765}{1000}$ths is old coin
while $\frac{232}{1000}$ths is new coin put in cir-
culation since the year 1871. These
two kinds of coin are stored together
and circulate together.

As shown in the above table the
amount of gold-bullion in the Treas-
ury and in banks alone is as-
certainable. There are no means
of ascertaining the amount in the
hands of the people. Since the
middle-ages much gold-dust
has been gathered in the Eastern
and northern countries; and
much gold has been stored up by
the people, as may be conjectured
from the fact that they are univer-
sally in the habit of hording articles made

of gold.

2d. Amount on hand June 30, 1880.

Gold-coin in Treasury, 10, 362, 443, yen

" " " banks, 953, 780. $\frac{877}{1000}$ "

" " " circulation, 88, 496, 524. $\frac{286}{1000}$ "

Gold-bullion in Treasury, 37, 182. $\frac{52}{100}$ oz

" " " banks, 2, 207. $\frac{25}{100}$ "

" " " hands of the people ,000 "

Total of gold coin 99, 812, 748. $\frac{163}{1000}$ yen.

Of this sum $\frac{802}{1000}$ is old coin, and $\frac{198}{1000}$ ths. is new coin.

The decrease of 6, 286, 377. yen since the preceding year is due to the fact that 594, 000 yen of old coin were sent to the mint to be recoined, and 834, 000 were exported, whilein the same time, only 460.000 yen were recoined against 5, 316, 000 new yen exported.

Gold-bullion in the hands of the people unascertainable as above explained.

—

II. The amount of silver-coin and amount of silver-bullion in the Treasury, in banks, and in circulation are, severally, as follows.:

1. Amount on hand June 30, 1880.

Silver-coin in Treasury, 3,848,857.$\frac{823}{1000}$ yen.

" " " banks, 331,437.$\frac{842}{1000}$ "

" " " circulation 46,123,002$\frac{426}{1000}$ "

Silver-bullion in Treasury, 290,848,$\frac{62}{100}$ oz.

" " " banks, 67,736$\frac{56}{100}$ "

" " in hands of the people, 000 "

2. Total of silver-coin, 50,303,292$\frac{291}{1000}$ yen; of which sum $\frac{547}{1000}$ is old coin while $\frac{453}{1000}$ ths. is new coin issued since 1870. Both kinds of coin are stored and circulated together.

As in the case of gold bullion the amount of silver-bullion in the hands of the people can not be ascertained.

2d " Amount on hand June 30, 1879.

Silver-coin in Treasury, 5, 334, 979 $\frac{8}{10}$ yen

" " " banks, 668, 475 $\frac{637}{1000}$ "

" " " circulation, 48, 365, 963 $\frac{386}{1000}$ "

Silver bullion in Treasury, 3, 120, 741 $\frac{43}{100}$ Oz.

" " " banks, 102, 824 $\frac{74}{100}$ "

" " in hands of the people, 000 "

Total of silver coin 49, 364, 418 $\frac{425}{1000}$ yen.

of which amount $\frac{537}{1000}$ ths is old coin and $\frac{461}{1000}$ ths is new coin.

The decrease of 938, 873 $\frac{466}{1000}$ yen since the preceding year is due to the fact that of old coin more than 532, 000 yen were sent to the mint to be recoined and more than 336, 000 yen were exported

while in the same time of new coin only two millions seventy six thousand yen were received against 2,146,000 yen exported.

—

III. The amount of paper-currency in the Treasury, in banks, & in circulation is as follows;

1st " Amount on hand june 30, 1878.

Paper-currency in Treasury, 22,660,929 51/1000,

" " " banks, 6,731,062 465/1000

" " in circulation, 108,492,017 484/1000

Total. 137,884,009,

Of the above total amount 877/1000 ths. is issued by the government and 123/1000 by the banks.

As in the case of gold and silver coin above noted both kinds of paper-currency are stored together

and circulate together.

2d " Amount on hand June 30, 1879.

Paper currency in Treasury, 8,155,157 $\frac{543}{1000}$ yen

" " " banks, 8,234,625 $\frac{242}{1000}$ "

" " " circulation, 130,898,498 $\frac{105}{1000}$ "

Total 146,488,681.

Of this total amount $\frac{774}{1000}$ ths. is issued by the government and $\frac{226}{1000}$ by the banks.

The increase of 8,604,672. yen above the amount of the preceding year is due to the fact that although the government has canceled 7,499,000. yen, in the meantime, more than one hundred new banks have been established which banks have issued about twice this amount.

—

IV. The amount of gold produced from all the mines is as follows:

1st " Amount produced in one year from July 1, 1877 to June 30, 1878. 14,304.$\frac{18}{100}$ Oz

Of this amount $\frac{832}{1000}$ ths was produced from government mines and $\frac{168}{1000}$ ths from private mines.

2d " Amount produced from July. 1, 1878 to June 30, 1879. 22,565.$\frac{9}{10}$ Oz.

Of this amount $\frac{936}{1000}$ ths was produced from government mines and $\frac{64}{1000}$ from private mines.

An increase of more than fifty seven per cent on the previous year will here be observed. If the amount be compared with that of the year before (1876-77) the increase is more than double.

This increase must be attributed to improvements in machinery and

and in the process of boring.

V. The amount of silver produced from the mines is as follows:

1st Amount for one year from July 1, 1877, to June 30, 1878. 563,728 $\frac{28}{100}$ oz. Of this amount $\frac{653}{1000}$ was produced from government mines, and $\frac{347}{1000}$ ths from private mines.

2d Amount for one year from July 1, 1878 to June 30, 1879,- 708,787 $\frac{22}{100}$ oz. Of this amount $\frac{689}{1000}$ ths was produced from government mines and $\frac{311}{1000}$ ths from private mines. Here also an increase of more than twenty five percent on the previous year will be observed. If the amount be further compared with that of the year before (1876-77) an increase

of more than fifty seven percent will be observed. This increase also is due to the causes before specified.

—

VI. The amount of gold coined, imported, exported, and consumed is as follows:

1. The amount coined in one year from July 1. 1877 to June 30, 1878 — — — 19,160 $\frac{84}{100}$ 02.

Amount imported, ooo "

Amount exported, 332,847. $\frac{4}{10}$ "

Amount consumed, 5,338. "

The above four amounts call for no special remarks, only that the amount consumed is approximate, owing to the difficulty of making an exact calculation.

The same is the case in the following year.

2d. Amount coined from July 1, 1878 to June 30, 1879, - - 24, 668. 47/100 Oz.
Amount imported, 1, 361 88/100 "
Amount exported, 330, 301, 92/100 "
Amount consumed. 5, 894. "

—

VII. The amount of Silver coined imported, exported, and consumed, is as follows:

1st Amount of silver coined in the year from July 1. 1877 to June 30, 1878 is - - - - 3, 497, 175 80/100 Oz.
Amount imported 1, 652, 452. 33/100 "
" exported 3, 973, 222 20/100 "
" consumed 108, 398 "

There also, no special remarks are called for. The amount em-

sumed in arts and manufactures is only approximate, as before stated.

2d. Amount of silver coined from July 1st 1878 to June 30, 1879. - - 1,800,443 89/100 oz.

Amount imported, 2,396,703 22/100 "

" exported, 4,049,606 27/100 "

" consumed 119,116 "

—

The preceding, from Art. I. to Art VII. covers only two years. The statistics for the previous years are not given, because some points necessary to a complete view are not ascertainable.

In conclusion, it is proper to remark that if the amounts of gold-coin, silver coin, paper currency, or gold and silver bullion in the treasury on the last of June 1879 be compared respectively with the corresponding

amounts on hand on the last of June of the previous year an increase or decrease, as the case may be, will be observed. This discrepancy is due to the fact that, as the convenience of the Finance Department required, old coins were sent to be recoined, and paper-currency was used to buy-up gold and silver bullion. Also on comparing the total amounts in the Treasury it will be observed that while the coin and bullion shows an increase of 4, 977, 000 yen (Mint regulation measure) the paper-currency shows a decrease of more than 14, 505, 000 yen. This great diminution of the amount of paper currency is due to the fact that as already stated (7, 166, 000 yen (the number before mentioned includes the amount destroyed; hence a discrepancy)

have been cancelled; and also to the fact that at the request of the Shizoku / "Shizoku" (armed class) government bonds payable in gold in their possession have been bought-up.

Informs Mr Conby
May 7. 1880.
Mr Caldwell

Ack

Madie

No 1104.



United States Legation,
Japan,
Tokei, April 14, 1880.

Mr Bingham
to the
Hon. Secretary of State.

Subject.

Mr Bingham, in compliance with Instruction No 491, has recommended Mr Joseph O. Carter to be Commercial Agent of Japan at Honolulu.

No 1104.

United States Legation,
Japan.
Tokei, April 14, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

I beg leave to acquaint you that in accordance with Instruction 491 and the request of Mr Comly I have addressed a note to His Excellency Mr Inouye, His Imperial Japanese Majesty's Minister for Foreign Affairs, recommending the appointment of Mr Joseph O. Carter to be our Commercial Agent of Japan at Honolulu in place of Mr John D. Brewer, deceased.

I have the honor to be,

Sir,

Sir,

Your obedient servant,

Jno. A Bingham

Ans'd [Left H.O. 10c] Oct. 7: 1880. mw Crosby

Referred to Mr. O'Connor for report & Law Room C.P. Augt 20th 1880 File C6 W.Hde

No 1105.

Rec'd instruction cancel at Hiogo Oct 9. 1880 M.W.M.

DEPARTMENT OF STATE MAY 11 1880 RECEIVED

United States Legation,

Japan,

Tokei, April 14, 1880.

Mr Bingham

to the

Hon. Secretary of State.

Subject.

Calling attention to the trial and conviction of James O'Neil alias Rodgers, an American seaman, for the murder of James King, a citizen of the United States. Mr Bingham is of opinion that no appeal lies in the case, as the finding of the Court was man-slaughter, not murder. He calls attention to the sentence of twenty

years imprisonment, as provided by the Consular Court Regulations, and to the statute penalty of the United States, and suggests that the Consular Court Regulations be amended so as to conform to the statute law.

No 1105.

United States Legation,
Japan,
Tokei, April 14, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

On the 26th ultimo I received from Julius Stahel Esq. United States Consul at Hiogo and Osaka, a transcript of his record in the case of the United States of America against James O'Neil alias James Rodgers charged with the murder of James King. I am also in receipt of the report of the inquest ordered by Mr Stahel to enquire into and report upon the cause of the death

I

of James King.

By the record it appears that on the 3d ultimo Mr Stabel issued his writ commanding R. G. Walsh, E. M. Kuhhardt and S. Endicott, citizens of the United States, to make inquisition and report upon the death at Kobe of James King, a citizen of the United States. — These gentlemen having been duly sworn made report upon oath under date the 3d ultimo that James King was a native of Louisiana and that he came to his death on the 3d day of March 1880 in Kobe "through wounds inflicted "by the hands of James O'Neil alias James "Rodgers as shown by the testimony and "admitted by the said O'Neil."

Upon this report of the inquest the Consul issued his warrant for the

arrest

"which shall have the force of law, supply
"such defects and deficiencies".
In my judgment the power of the United
States Minister in Japan to prescribe
punishments for crimes committed by
citizens of the United States within
this Empire, is by the terms of this
section limited to cases where neither
our statutes nor the common law &c.
furnish appropriate remedies and
prescribe a penalty for the crime.
As our statute, volume 18, page
473, Chapter 138, prescribes the
penalty for the crime of manslaughter,
to wit: imprisonment not exceeding
ten years and a fine not exceeding
One thousand dollars ($1000.00) —
(See also Revised Statutes for 1878,
section 5343 and notes), it seems

to

to me proper to suggest that the penalty in cases of manslaughter, to wit: imprisonment for not less than five nor more than twenty years, prescribed by my predecessor in the Consular Court Regulations ("Criminal proceedings", section 22, page 48) being in contravention of the statute provision, ought to be so amended as to conform thereto.

Should you concur in this opinion, I will under the statute so amend the regulations as to make all the penalties thereof for crimes conform hereafter to the penalties prescribed by our existing statutes.

Consul Stabel but followed the

regulations

regulations; and as the commission of the crime was marked by acts of great cruelty on the part of the accused, I think it due to the Consul to say that he doubtless considered it his duty to inflict in this case the highest penalty authorized by the Court Regulations.

Should the Regulations be amended as suggested, I beg further to suggest whether the excess of the penalty adjudged should not be remitted by the President. I think section 5330 Revised Statutes so far aids the pardoning power, and certainly does not and cannot restrict it.

J

I have the honor to be,

Sir,

Your obedient servant,

Wm. A. Bingham

arrest of James O'Neil alias James Rodgers, who was at the time a seaman of the United States on board the American merchant vessel "St Charles" then in the port of Kobe (Hiogo). On the 6th ultimo Mr Stahel selected four assessors, citizens of the United States of America, from the list of assessors approved for the current year, and with them proceeded to try O'Neil alias Rodgers for the murder of King. Upon sufficient testimony the Consul on the 8th ultimo found the accused "James O'Neil alias "James Rodgers guilty of man= "slaughter", and sentenced him to "imprisonment for twenty years "from that day in the prison for "American convicts at Kanagawa, Japan".

In

In the finding and judgment of the Consul the associates concurred. From the judgment of the Consular Court the counsel for the accused gave notice of appeal to the United States Minister in Japan. The Consul disallowed the appeal on the ground that by sections 4102 and 4106 — Revised Statutes of the United States for 1878 the decision of the case by the Consular Court was made final.

It seems to me that the ruling of the Consul upon the notice for appeal is in accordance with — law. It is my opinion that the words of sections 4102 and 4106 import that the decision of the Consul when sitting alone shall

be

be final in all cases where the fine imposed shall not exceed One hundred dollars (100^{00}), or the imprisonment adjudged shall not exceed one hundred days; and that the Consul's decision when sitting with associates who concurs with the Consul in the opinion which he gives shall be final, save where the offence is found and adjudged to be capital. As the finding in this case is that the offence is not capital, but manslaughter only, I do not consider that the appeal lies, or that I have any jurisdiction to try the case on appeal.

The sentence in the case, as above remarked is for twenty years,

at

as provided in 22d section "Crim-
"inal proceedings" of the Consular
Court Regulations. It is provided
by section 4086 of the Revised Statutes
that the jurisdiction of our Consuls
"shall be exercised and enforced
"in conformity with the laws of
"the United States"; and it is fur-
ther provided therein that where
the laws of the United States" are
"not adapted to the object or are
"deficient in the provisions necessary to furnish
"suitable remedies", and if neither the common
law, the law of equity or admiralty,
nor the statutes of the United States
furnish appropriate and sufficient
remedies (in cases either civil or
criminal), the Minister in Japan
"shall by decrees and regulations
which

Ask

Made

No 1106.



United States Legation,
Japan.
Japanese
Tokei, March 16, 1880.

Mr Bingham
to the
Hon. Secretary of State.

Subject.

The Herald publishes an item from the S. F. Bulletin to the effect that Mr Bingham is to become a candidate for Congress. Mr Bingham thinks it due to himself to contradict the rumor, which manifestly purports to be published on his authority.

No 1106.

United States Legation,
Japan,
Tokei, March 16, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

In the Japan Daily Herald of yesterday appeared the following: "It "is understood that John A. Bingham, — "Minister to Japan, will return to this "country within the next four weeks and "re-enter politics as a candidate for Congress "in his old district the ~~XVIII~~ 18th Ohio" — "S.F. Bulletin."

If this item had not been reproduced here I should have taken

no

no notice of it. I shall request a contradiction of it by the Herald, as I have not understood what the article states "is understood" concerning me, neither have I at any time entertained or intimated such a purpose. I think it due to myself to notice this statement which manifestly implies that it is published upon my authority.

I have the honor to be,

Sir,

Your obedient servant,

Jno. A. Singleton

Two copies of enclosure to Treasury
Same to Treasury
File mark of enclosure
Dis to June 10.
Mr Caldwell

No 110.



United States Legation,

Japan,

Tokei, May 5th, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

Enclosing notice of erection of a lighthouse at Kuchinotsu and a beacon at Chodain rock.

Enclosures

1. Duplicate copies of Notification No 1
2. " " " No 2

No 1107.

United States Legation,
Japan,
Tokei, May 5, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

Herewith I enclose five copies
1/ of an official notice issued by this
Government to Mariners of a beacon
erected on the sunken rock called
Chodain in the Inland Sea of Japan,
2/ and also five copies of another
official notice to Mariners, issued the
16th ultimo by this Government, of a fixed
white light of the 6th order to be Exhibited
from and after the 10th instant from

Sunset

Sunset until sunrise each and every night from the lower on the southern shore of the peninsula of Simibara in the province of Hizen. Japan.

I have the honor to be,

Sir,

Your obedient servant

M. C. Bingham

DEPARTMENT OF STATE
JUN
8
1880
RECEIVED

No 1108.

United States Legation,

Japan.

Tokei, May 5, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

Enclosing duplicate accounts for the Quarter ended March 31, 1880.

Enclosures.

1. Statement of account, with Exchange voucher.

2. Abstract of contingent Expenses with three vouchers.

No. 1108.

United States Legation,
Japan,
Tokei, May 5th 1880.

Hon. William M. Evarts,
Secretary of State,
Washington D. C.

Sir:

Referring to my No 1096 enclosing my accounts for salary and contingent expenses for the Quarter ending the 31st of March last. I now beg leave to enclose herewith a duplicate copy of said accounts and of the vouchers for the same.

I have the honor to be, Sir,

Your obedient servant,

Jno A Bingham

Ack + give substance to Press
C.P

Sent to Press

No 1109.



Mr. Adee

United States Legation,

Japan;

Tokei, May 6, 1880.

Mr Bingham

to the

How Secretary of State.

Subject.

Customs report for March 1880. Imports exceed exports to the value of Yens 1,166,032 12.

Excess of export of Specie and bullion yens 806,363.

Enclosure

Duplicate copies of the Customs Report,

March 1880.

No 1109.

United States Legation,
Japan.
Tokei, May 5, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

1/ Herewith I enclose for your information the "Monthly Returns of His Imperial Majesty's Customs of Japan for the month of March 1880".

The abstract (page 9) shows that the value of the export of domestic productions for the month was yen 1,441,849 59/100 and of the imports yen 2,607,879 11/100, the latter being in excess of the exports to the amount of yen 1,166,032 12/100.

It

It appears that the total amount of duties upon the imports for the month was yen 126,874^{00}, showing the duties to have been less than five per centum.

It also appears that the Export of Specie and bullion for the month was in Excess of the import thereof to the amount of Eight hundred and sixty thousand three hundred and sixty three yen (¥860,363^{00})

I have the honor to be,

Sir,

Your obedient servant,

Jno. A. Bingham

Mr. Adee

Ack + thanks

Substance of dispatch to Press

attended to C.P

Rec'd, with thanks, June 14. 1880 Mrs Caldwell

Copy to Interior. 14.

" " to Library

No 1110.



United States Legation,

Japan,

Tokei, May 6th, 1880.

Mr Bingham

to the

How Secretary of State.

Subject.

Report upon Mining and Mines in Japan by Mr Ariga of the Tokio University.

Enclosures.

Duplicate copies of the report.

No 1110.

United States Legation,
Japan,
Tokei, May 6th, 1880.

Hon William M. Evarts,
Secretary of State,
Washington, D.C.

Sir:

Herewith I beg leave to transmit for your information duplicate copies of volume 2 of the "Memoirs of the Science Department, University of Tokio Japan".

This volume treats of mining and mines in Japan very fully and, I doubt not, with reasonable accuracy.

Permit me to call your attention to the Japanese mining land pages 22-24.

Among

Among other provisions of this law I note that foreigners are not permitted to acquire any pecuniary interest in the working of a mine, nor is the owner permitted to mortgage his mining lease or its future produce to a foreigner.

The tables on pages 32-34 give the amount and average value of the products from government, and also from private mines, of gold, silver, copper &c., of the former since 1868 and 1875-77, and of the latter from 1874 to 1877 inclusive.

Table VII, page 49, shows the export and import of bullion in bars and in specie for certain periods. From 1550 to 1671 the export of gold and silver is stated to have been five hundred million (500,000,000) ~~dollars~~ pesos.

the

[the catty being equal to one and a third pound avoirdupoise.]

From 1872 to 1878 the total export of gold is estimated at yen Thirty six million seven hundred and sixteen thousand five hundred and eighty one (¥36,716,581^oo), and the total Export of silver for the same period is estimated at yen Twenty six million one hundred and seventy two thousand three hundred and twenty seven (¥26,172,327^oo); and the table further shows that the export of gold for the period last mentioned was in excess of the import thereof yen Thirty three million seven hundred and ninety thousand six hundred and forty eight (¥33,790,648^oo), and that the export of silver was in excess of the import thereof

thereof for the same period. Nine million six hundred and ninety two thousand seven hundred and ninety eight ($9,692,798 ⁵⁄₁₀₀).

I have the honor to be,

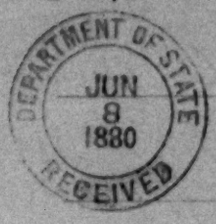
Sir,

Your obedient servant,

Mc A. Bingham

File

No 111.



United States Legation,

Japan,

Tokei, May 6, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

Receipt of Instructions 492 to 495.

No 1111.

United States Legation,
Japan,
Tokei, May 6, 1880.

Hon William M. Evarts,
Secretary of State,
Washington, D.C.

Sir:

I have the honor to acknowledge the receipt of Instructions numbered 492, 493 (with enclosure) 494 and 495; and also the enclosures of No 488.

I have the honor to be,
Sir,
Your obedient servant,
Geo. A. Bringham

1 Copies to Navy Dept. referring to previous correspondence on this subject by Secretary

June 18. 1880. Mr Caldwell

Ack

made

No 1112.



United States Legation,

Japan,

Tokei, May 6, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

Mr Bingham receives from Mr Inouye a note to the Japanese Consul at Fusan, Corea, requiring that official to lend his aid to Commodore Shufeldt in his mission to Corea. This note, together with charts received from the Foreign Office, Mr Bingham transmits to Commodore Shufeldt at Nagasaki. Mr Inouye, for reasons given in his letter, declines to furnish letters of introduction for the

Korean officials.

Enclosures.

1. Mr Inouye to Mr Bingham, April 7, 1880.
2. Mr Bingham to Commodore Shufeldt " 20 "
2. Mr Wooyeno to Mr Bingham " 20 "
3. Mr Inouye to Mr Kondo " " "
4. Commodore Shufeldt to Mr Bingham " 27 "

No 1112

United States Legation,
Japan,
Tokei, May 6, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

Referring to Instruction No 475, communicating the Department Instruction of date 9th of November last, which by inadvertence was not at that time transmitted to me, and which related to Commodore Shufeldt and his proposed visit to Corea, I have the honor to say that I was informed of this Instruction by Commodore Shufeldt in a communication of date the 14th of February last

last, as I acquainted you in my No 1090. I had also the honor to acquaint you in that dispatch that in accordance with said Instruction I had made application to the Foreign Office of this Government on behalf of Commodore Mr Shufeldt for letters &c. as shown by my despatch to His Excellency Mr Inouye, a copy of which was inclosed with my No 1090. On the 7th ultimo I received a note from Mr Inouye — 1/1112 (a copy of which is herewith) in which His Excellency said that, for reasons therein given, he was unable at present to furnish me, as requested, letters introducing Commodore Shufeldt to the Corean officials, but that he would advise the Japanese officers in Corea to do what they could to advance

Commodore

Commodore Shufeldt's mission to that Government. On the 19th ultimo I visited the Foreign Office for the purpose of requesting in person the letters of His Excellency Mr Inouye to the Japanese officials in Corea. Mr Inouye not being there, I made my wishes known to Mr Wooyeno, the Vice Minister for Foreign Affairs, who on the 20th ultimo forwarded to me a letter of Mr Inouye to the Japanese Consul at Fusan, Corea, together with nine charts of Corea for the use of Commodore Shufeldt. On the 20th ultimo I addressed a note to Commodore Shufeldt, who had reached Nagasaki, enclosing Mr Inouye's letter and the nine charts of Corea, a copy of which note and of Mr Inouye's letter I have the honor to enclose. On the 3d instant

2/1112
3/1112

4/1112 instant I received a note from Commodore Shufeldt, a copy of which is herewith. I note that Commodore Shufeldt concurs in my opinion that Fusan is the best port from which to communicate with the capital of Corea, and that he concluded to leave Nagasaki for that port about the 1st instant.

It is also to be observed that the Commodore in his letter says that he has "good reason to "believe that prominent officials in "China have recommended the Coreans "to make treaties with foreign powers, "owing perhaps to dread of Russia "and possibly Japan", and adds that "although he feels this to be "an opportune time to make the "attempt to open negotiations, yet he

"he is by no means sanguine of
"success".

I have the honor to be,

Sir,

Your obedient servant,

Mr. A. Bingham

No 1112.

Enclosure 1.

Copy
Translation

No. 14

Foreign Office, Tokio,
The 7th the 4th Month
the 13th year Meiji.

His Excellency
John A. Bingham
Envoy Extraordinary & Minister
Plenipotentiary of the U. S. A.
Sir:

I have the honor to acknowledge the receipt of Your Excellency's despatch dated the 12th March 1880, wherein Your Excellency acquaints that Commodor R. W. Shufeldt, United States Navy, commanding the United States Flagship "Ticonderago" is expected to shortly visit the open ports of Corea on a friendly mission from the United States Government to that of Corea, and requesting me to furnish Your Excellency with

letters to the Japanese officials in Corea and also to the Corean officials commending the Commodore to their favorable consideration.

I beg leave in reply to say that a very few years have elapsed since the conclusion of the Treaty of Friendship between Japan and Corea, and that the time has not as yet arrived for putting into full execution the stipulations of the said Treaty; furthermore that the Corean Government not being familiar with foreign intercourse, appears still disinclined to open the country to Foreigners. I beg thereon to say that if the introduction of the Commodore to the Corean officials should be granted according to Your Excellency's request, I fear that it might give rise to some complications whereby the execution of our Treaty with that country might be somewhat prevented. I greatly regret thereon that I am at present unable to comply with Your Excellency's wishes.

I may add that in my opinion it would not be the best policy for the present to furnish any letters of

introduction to the officials of Corea.
But I am willing to advise the Japanese
officials in Corea to do the best in their
power in facilitating the said mission.

I avail myself of this occasion to renew
to Your Excellency the assurance of my
highest consideration.

Inouye Kaoru.

H. I. J. M's Minister for
Foreign Affairs.

No 1112.

Enclosure 2

No. 885. U. S Legation,
Tokei, Japan,
April 20, 1880.

Commodore
R. W. Shufeldt, U. S. N.
U. S. Flagship "Iconderoga",
Special Service, Nagasaki.

Sir:

I received your telegram of the 17th inst. and replied thereto that I would answer by next mail.

Referring to my letter to you of date the 12th ult. I have the honor to acquaint you that on the 12th ult. I addressed a note to His Excellency Mr. Soroyé His Imperial Japanese Majesty's Minister for Foreign Affairs in which I requested letters commending you to the Japanese officials in Corea and also to the officials of that Government. On the 7th

instant I received a reply from His Excellency Mr. Inouye a copy of which is herewith. On Yesterday I visited the Foreign Office and had an interview with the Vice Minister for Foreign Affairs Mr. Mayeno who was not able to answer my enquiry whether I could not have letters to the Japanese officials, but promised me that an answer would be made to my requests in this behalf to day, and also promised to furnish me charts of Corea for your use.

I am now in receipt of the enclosed letter addressed by His Excellency the Minister for Foreign Affairs to Kondo Masuki the Japanese Consul at the port of Fusan, Corea. I also forward herewith nine charts of Corea which I received to day from the Foreign Office.

I regret that this government did not feel at liberty to commend you directly to the Chief officers of the Corean Government. I think it will to say to you that Mr. Inouye and also Mr. Mayeno remarked in conversation with me that

The Coreans are exceedingly jealous of foreigners and reminded me of the ill-treatment of Japanese vessels &c. by that people only a few years since when they went to Corea on a friendly visit.
It seems to me proper to suggest to you that as there is no Corean port open to Japan save that of Fusan and none to any other Foreign Power you should not attempt to enter Corea at any other port.

Hoping that your visit to Corea may be in every sense a success, & regretting that this government did not feel at liberty to respond more satisfactorily to the request made by me on behalf of our government and of yourself,

I have the honor to be, Sir,
Your obedient servant,
(Signed) John A. Bingham.

No 1112

Enclosure 2.

Copy.

Foreign Office, Tokio.
April 20th 1880.

Dear Mr. Bingham.

I have communicated to Mr. Inouye your desire made to me yesterday to obtain a letter of introduction to our consul at Fusan, Corea, for Commodore R. W. Shufeldt, who intends to visit Corea shortly. Mr. Inouye having been pleased to comply with your desire, I now beg to enclose a letter of introduction together with English translation for his perusal.

Yours very truly,
(signed) Yoshiro Kagimori

P. S. I beg to forward you nine charts of Corea, which I fortunately found in the record of the Gaimusho.

No 1112

Enclosure 3.

Copy of Translation.

The 20th of the 4th month
of the 13th year of Meiji.

To Kondo Masuki Esq,
Japanese Consul at Fusan,
Corea.

Sir:

H. E. John A. Bingham E. E. and M. P. of the U. S. informs me that Commodore R. W. Shufeldt commanding the U. S. Ship of war "Ticonderoga" is shortly expected to enter the port of Fusan on a friendly mission from the U. S. Government to that of Corea, and at the same time requests me that the Commodore may be furnished with a letter of introduction to you. I have therefore to inform you that this letter has been handed over to the Hon. Mr. Bingham

in conformity with his request.

I instruct you that, upon the arrival of Commodore Shufeldt at your port you will in no way interfere with his mission, but, having the treaty of friendship existing between the U.S. and Japan, you will give him every possible assistance that he may require at your hands during his stay in your port.

(Sgd) Inouye Kaoru,
H. I. J. M's Minister
for Foreign Affairs.

No 1112

Enclosure 4

Copy.

U. S Flagship Ticonderoga.
Special Service,
Nagasaki, Japan
April 27, 1880.

Hon. John A. Bingham,
United States E. E. & M. P.
Tokio, Japan.
Sir:

I have the honor to acknowledge the receipt of your communication of the 20th inst. advising me of your request in behalf of our mission to Corea, and enclosing copy of reply thereto from His Imperial Japanese Majesty's Minister for Foreign Affairs; His Excellency Mr. Soonyo, and also a letter from His Excellency to Mr. Keondo Masuki the Japanes Consul at Fusan, with nine (9) charts of Corea.

I beg to express my appreciation of the courtesy of His Excellency Mr. Soonyo. and my thanks for the charts and particularly

for his excellent letter to Mr. Masuki Consul at Fusan, whom we met here a few days since while on a short leave from his post. Fusan had occurred to me as being probably the best point from which to communicate with the Capital, and we will leave here for that port about the 1st proximo.

I have good reasons to believe that prominent officials in China have recommended the Coreans to make treaties with foreign powers, owing perhaps to the dread of agression by Russia and possibly also Japan, and although I feel this to be an opportune time to make the attempt to open negotiations, yet I am by no means oversanguine of success. At all events I feel especially obliged to you for your kind efforts in our behalf, and thanking you for your good wishes,

I have the honor to be
Very respectfully
Your obedient Servant,
R. W. Shufeldt.
Commodore U. S. N.
On Special Service

Sent to the President July 27. 1880. Wm Cridler

1 Instruction. Comm. D. Aug 10. 1880 Wm Cridler

No 1113.

1 See instruction to the Consul at Kobe Aug 10/80

O'Connor

C. P.

Wm Adee



United States Legation,

Japan,

Tokei, May 8th, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

Transmitting the record in the United States versus Wm Dinkelle for the murder of Chas. H. Abbott at Kobe, respectively 2d and 1st mates on the American ship "Centennial". The Consular Court finds Dinkelle guilty of murder in the first degree. Mr Bingham approves the sentence, but defers issuing warrant of execution until the case can be submitted to the President, which is

done herewith.

Enclosures.

1. Mr Bingham to Mr Stahel, April 19. 1880.
2. Mr Stahel to Mr Bingham " 29 "
3. Copy of proceedings in the inquest and selection of associates.
4. Copy of testimony in the case
5. Copy of the sentence

No 1113.

United States Legation,
Japan,
Tokei, May 8th, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

On the 13th ultimo I received from Julius Stahel Esq, our Consul at Hiogo (Kobe), a communication enclosing a transcript of proceedings in his Consular Court against one William Dinkelle, second mate of the American merchantman "Centennial", wherein the said Dinkelle was charged and tried for the murder in the harbor of Hiogo of Charles H. Abbott, the

First Mate of the said vessel. The transcript showed that the accused had been tried and convicted of murder in the first degree in manner and form as charged, and the same was submitted to me for my approval under the statute. On the 19th ultimo I addressed a despatch to Mr Stahel, a copy of which is herewith, pointing out certain omissions in the record and declined to pass upon his proceedings until I should receive from him a more perfect record. On the 29th ultimo I received from Mr Stahel a note enclosing a perfect record of the proceedings, copies of which I have the honor to enclose.

1/1113

2, 3, 4 & 5/1113

From this record it appears that every requirement of the statutes

of

of the United States and of our Consular Court Regulations was conformed to by the Consul, and that after a lawful trial of the accused he was found guilty of murder in the first degree by the Consul, in which conviction the associates, as appears of record, concurred. The conviction of the accused thus certified having been submitted to me for my approval, upon a careful consideration of the record and of the facts therein set forth I was constrained under sections 4102 and 4103 of the Revised Statutes to approve the conviction, but to withhold the warrant for the execution of sentence until, as provided by section 4103, the same might be submitted to the President.

I

I accordingly so advised the Council
6/1113. by letter, a copy of which is enclosed.
The sentence of death was on yesterday
pronounced by the Council on the
accused and in his presence.

In my opinion, sections 4102 and
4103 Revised Statutes do not authorize
me to refuse my approval of the finding
of the Council and his associates when
there is no error of law upon the record
and when the facts proved on the trial and
shown by the record justify the finding.
In my opinion, the facts upon the record
justify the finding, and the law, as you
know, enjoins the sentence of death.
But the statute (section 4103) also
makes it my duty, in my judgment
after approval of the conviction, if I
am satisfied that the ends of public

justice

justice demand it, to postpone the Execution, and, if mitigating circumstances occur, to submit the case to the President for pardon.

It seems to me that, before issuing process for the Execution of the sentence of death upon the accused, it is my duty to submit the record to the President, to the end that it may be considered whether it would not be well to commute the penalty to imprisonment for life in a prison within the United States, in view of the fact that he challenged the jurisdiction of the Consul to try him for murder in the absence of an indictment, — That he testified on trial that he did not know what he did, and of the — more weighty fact that the accused

a

a short time before he committed the crime had suffered severe corporeal punishment justly inflicted on him by Mr Abbott, whom he murdered day within thirty minutes thereafter.

While I have no doubt that the Act of Congress conferring jurisdiction on the United States Consuls in Japan to try and on conviction to punish according to our laws all citizens of the United States convicted before them of crimes committed in Japan, I may be permitted to say that under the instructions of the Department, which accord with my own judgment, I am not authorized to question the constitutionality of that law (see postscript.) As to the other point above referred

to

to, the rage and excitement of the prisoner at the time by reason of his just chastisement, I do not consider that I have good reason to question the finding of the Consul and his associates upon the question of fact, whether the accused had sufficient cooling time before the commission by him of his great crime.

All that I feel at liberty further to say is that as our Government has never yet inflicted in Japan the Extreme penalty of death, it is well to consider whether in this case "the ends of justice", in the words of section 4103, demand that this man shall be executed; and that, in my opinion, no harm will be done if it should please the President to commute the just sentence passed

in

in this case to imprisonment for life within the United States.

I shall take no further action until I shall receive your instructions, and I respectfully suggest that, if commutation of the sentence be ordered by the President, I be so informed by telegram.

I have the honor to be,

Sir,

Your obedient servant

Wm A Bingham

P. S.

I have the honor to call your attention to my despatch to the Department No 82 and the Department Instruction to me No 60.

No 1113.

Enclosure 1.

Copy.

No 884.

United States Legation,
Tokei, April 19, 1880.

Julius Stahel Esq
United States Consul,
Osaka and Hiogo.

Sir:

I have to acknowledge the receipt of your No 65-9 of date the 13th instant enclosing a transcript of your record in the criminal case before you entitled the United States of America against William Dinkelle, second mate on board the American ship "Centennial". By your record it appears that said William Dinkelle was on the 5th day of April 1880 upon the written complaint of James G. McDonald, verified by him upon oath before you, charged with having feloniously, wilfully and of

malice aforethought in the harbor of Kobe (Hiogo) and on board the American merchant ship "Centennial," then and there did kill and murdered Charles H. Abbott, who was then the first mate of said vessel. It further appears of record that said William Dinkelle on the 8th instant was duly arraigned before you at Kobe upon said charge, and pleaded not guilty thereto.

The original finding by you, which you transmitted separately under seal, shows that the prisoner was convicted by you of murder in the first degree and that to this conviction the associates assented over their signatures.

The record is defective in this:—

1st It does not show that the associates were drawn by lot from a box from the list of assessors approved by me for the current year as required by the 3d Article of Consular Court Regulations, "Criminal proceedings," and the 66th Article thereof "civil proceedings",

and by section 4106 Revised Statutes.
2d It does not shew that the associates were sworn as required by said regulations.
3d It does not shew that the associates were present in the presence of the accused.
4th It does not shew as required as required by section 4106 Revised Statutes an entry upon the record by each associate of his judgment and opinion and that the same was signed on the record by each associate.

For these reasons I return the record and certified finding to you with the request for a more perfect and complete record of the trial, proceedings and findings therein.

I am constrained to decline for the present to pass upon the conviction, certified to me because of the defects in the record above pointed out, and therefore I reserve my opinion thereon until I shall receive a more perfect record.

I am &c &c

(Sgd.) Jno A Bingham

1 3

No 1113

Enclosure 2.

Copy.

No. 676.

United States Consulate,
Osaka and Hiogo,
Hiogo, April 29th, 1880

To

H.E. John A. Bingham
E.E. and M.P. of the United States,
Tokei.

Sir:

I have the honor to acknowledge the receipt of your despatch No 884 of date the 19th of April 1880, with which you return to me the record and certified proceedings in the case "the United "States of America versus William Dinkelle, an "American citizen and 2d Mate on board the "American ship 'Centennial'," with instructions to furnish Your Excellency a more perfect and complete record of the proceedings, trial and finding in the said case.

In compliance with your

orders I beg to hand you herewith enclosed a certified copy of the perfected record, proceedings, trial and finding in the criminal case entitled "The United States of America versus William Dimmelle, an American citizen and Second Mate on board the American ship 'Centennial'", from which you will perceive:—

First - That the Assessors were drawn by lot from the list of Assessors approved by Your Excellency on the 17th of January 1880, as required by the 3d Article "Criminal proceedings, Consular Court Regulations", the 66th Article thereof "Civil proceedings" and by Section 4106 Revised Statutes.

Second - That the Assessors were drawn in the presence of the accused and his counsel.

Third - That the Assessors were sworn in, in open court, in the presence of the accused and his counsel as required by said Regulations, and that, in addition to the regular oath, I have administered to the Assessors the oath of allegiance.

Fourth— I beg to state that the decision of this Court in the foregoing case, with the opinion and judgment of the Assessors, is entered upon the record of the Consular Court and signed by each Assessor.

In conclusion I enclose a copy of the decision of this Court signed by myself and all the Assessors in the case.

I am, Sir,

With great respect,

Your obedient servant,

Sgd. J. Stabel

U. S. Consul

No

Enclosure 3.

Copy.

Criminal Docket No 5-1.

The United States of America

versus

William Dinkelle (an American citizen) Second Mate on board the American ship "Centennial".

Charge, Murder.

April 5th 1880- Complaint filed by James G. McDonald (an American citizen) seaman on board the American ship "Centennial".

Complaint.

James G. McDonald, an American citizen, and seaman on board the American ship "Centennial", being duly sworn says:- That on the 3d day of April 1880, between four and five o'clock P.M. in the harbor of Kobe (Hiogo) Japan, on board the American ship "Centennial" one William Dinkelle (commonly called Kelly) Second Mate on board the American ship "Centennial", did in the presence of this deponent and other witnesses, feloniously, wilfully and of malice aforethought fire and discharge a pistol (revolver)

loaded with powder and ball at one Charles H. Abbott, late First Mate on board the American ship "Centennial" and give him several mortal wounds of which the said Charles H. Abbott languished a short time and then died.

(Sgd.) Jas. G. McDonald

Sworn to the fifth day of April 1880 before me

(Sgd.) J. Stahel

U.S. Consul Acting judicially.

U.S. Consular Court.

Hiogo, Japan, April 5th, 1880.

I, J. Stahel, U.S. Consul and Judge ex-officio, do hereby certify that I have reasonable grounds for believing that the contents of the foregoing complaint are true.

(Sgd.) J. Stahel, U.S. Consul, Acting judicially.

Warrant.

In the Court of the United States Consulate,

Osaka and Hiogo.

Hiogo, April 5th, 1880.

To

F. J. H. Nicolstead, U.S. Acting Marshal of the Court ——

You will commit to jail for confinement until further commend the body of William Dinkelle, and of this writ make due return. The charge against the prisoner is that on the 3rd day of April 1880 between four and five o'clock P.M. in the harbor of Kobe (Hiogo) Japan on board the American ship 'Centennial' the said William Dinkelle did in the presence of James G. Mc Donald and other witnesses, feloniously, wilfully and of malice aforethought fire and discharge a pistol (revolver) loaded with powder and ball at one Charles H. Abbott, and give him certain mortal wounds of which the said Chas H. Abbott languished a short time and then died, and he, the said William Dinkelle, is committed for trial.

(Sgd.) J. Stahel,
United States Consul,
Acting judicially.

Consular seal

I have committed the person named and the following is his true description:—

Description.

Age 32 years, Height 5 feet 6 inches, Complexion light, Hair brown

(Sgd.) F. J. H. Stenstead,
Acting U.S. Marshal

Hiogo. Japan.
April 5th 1880, at 4 o'clock P.M.

I received in the Municipal Jail, subject to the order of the U.S. Consular Court, William Dinkelle,

Hiogo, Japan, April 5th 1880,
At 4 o'clock P. M.

(Sgd.) J. Peterson
Sergeant, Municipal Police Force

April 5th 1880. The prisoner was brought into Court and the charge read to him in the presence of his counsel, Mr F. Bradley, and an authenticated copy of the charge handed to him, after which the following Assessors were drawn in their presence from the list of Assessors approved by the United States Minister to Japan on the 17th day of January 1880., O.H. Gulick, J.A. Reed, R.H. Davis, J.F. Gorham, T.W. Gulick and P.K. Dunnaway, to none of whom exception was made either by the prosecution or by the defence.

April 6th 1880. The Acting U.S. Marshal returned the summons for O.H. Gulick, with the endorsement that O.H. Gulick cannot be found

within this Consular jurisdiction.

J. W. Gulick was excused on the ground of his not being certain whether he is an American citizen or not, having been born in the Sandwich Islands; and P. K. Dennaresq excused for valid reasons, having formed a positive opinion as per his statement filed this day:-

Copy of P. K. Dennaresq's statement.

Kobe. April 6th, 1880.

Sir:-

Having been summoned to assist you next Tuesday in the case of the "People of the United States vs the second officer of the American ship "Centennial" charged with murder, I deem it only right that I should inform you of my conscientious scruples against capital punishment, inasmuch as I understand that I shall be called upon to assent to or dissent from the sentence as well as the question of guilt, and should it be one of death, I could not agree with the decision of the Court over which you will preside.

I am, Sir, Your obedient Servant,

(Sgd.) P. K. Dennaresq

Genl J. Stahel
U.S. Consul
Acting Judicially

April 7th, 1880 at 2.45 o'clock P. M.
the prisoner William Dinkelle appeared in
Court with his Counsel Mr F. Crunchley, and
in the presence of the accused and his
Counsel, R. G. Walsh was drawn as Assessor
to complete the number of Assessors required
by law, no objection being raised to R. G. Walsh
as Assessor, and the prisoner being ready for
trial the hearing was ordered for 10 o'clock
A. M. Thursday the 8th of April 1880.

April 8th 1880. The oath of
allegiance was administered to J. A. Weed,
J. F. Gorham, R. H. Davis and R. G. Walsh.

(A copy of the oath of allegiance
administered to the Associates above mentioned
is set forth in the record)

The Court opened at 10 o'
clock A. M. and the Assessors J. A. Weed,
J. F. Gorham, R. H. Davis and R. G. Walsh,
having been accepted by both the prosecution
and the defence, were sworn in the
presence of the accused and his Coun-
sel in open Court.

Copy of Oath administered to the Assessors.

J. A. Reed, J. F. Gorham, R. H. Davis and R. G. Walsh - You (and each of you) do solemnly swear that you will faithfully hear and duly consider the evidence to be submitted in the matter now before the Court and a fair and impartial opinion give in the premises, to the best of your ability. So help you God.

Copy of oath administered to F. J. H. Merrillat as Clerk of the Court:- You do solemnly swear that you will faithfully discharge all duties incumbent upon you as Clerk for the United States Consular Court for Hiogo Japan to the best of your ability. So help you God.

No

Enclosure 4.

Copy.

In the Court of the United States Consulate

Hiogo, Japan,

Thursday, April 8th A.D. 1880.

Before Julius Stahel, Consul and Judge in the Court.

J. A. Weed
J. F. Gorham
R. H. Davis
R. G. Walsh
} Assessors

The United States of America

versus

William Dinkelle, Second Mate on board the American ship "Centennial."

Charge

Charge

In the Court of the United States Consulate

Osaka and Hiogo.

Hiogo, April 5th, 1880.

The United States of America

versus

William Dinkelle (an American citizen)

Second Mate on board the American ship

"Centennial"

(Here follows the affidavit of James G. McDonald given in Enclosure 3 with the certificate of General Stanel also given there)

Court opened on Thursday the 8th day of April at 10 o'clock A. M.

The foregoing charge was read to the prisoner, who is defended by the Hon. Fred Cruchley, who said. "May it please your honor before the prisoner pleads I

object to prisoner being arraigned Ellept on indictment."

The objection not sustained by the Court.

The prisoner personally pleaded "Not Guilty."

The Court notified the prisoner that he has the right to testify in his own behalf.

James G. Mc Donald, seaman on board the American Ship "Centennial," being duly sworn, testified:—

Refire On Saturday the 3d of April 1880 about 5 o'clock there was trouble between the second mate and one of the men. The man ran aft, went on the starboard side of the afterhouse, crossed the deck then to the port side and was coming forward and reached the forward part of the house; and the mate came from the pilot house, ran toward the man and stopped him. What remark he made

to the man I do not know. The second mate had been following the man all this time and, coming to where the mate and the man were standing, the mate interposed himself between them and told the second mate not to strike the man again. The second mate desisted for the time being, what else passed between I do not know. The next I know was we were making up sails when I heard the mate say to the second mate "How dare you strike a man when I tell you not to". After looking up it seemed to me that the mate had either pushed or struck the second mate violently. The second mate then struck the mate and they both clinched and struggling for a moment or two they fell, the second mate falling beneath. The Mate then got the second mate by the throat with both hands, the second mate said "You are choking me," the mate said "I know it" and asked the

second mate if he had had enough. The second mate said "yes". The mate repeated the question still with his hands at the throat of the second mate, at the same time striking the second mate's head against the deck several times. The second mate then said "enough". The mate then let him up and ordered him to his room and told him to remain there until the Captain came on board; also said to the second mate "You ought to have known better than to strike me". The second mate remained in his room about ten minutes as near as I can tell, the hands meantime had resumed their work at the sails. I did not see the second mate come out of his room, but heard him speak and say to the mate "Fight me now". When I looked up I saw the second mate on the main hatch, he had a revolver in his hands which he pointed towards the steward's door where the mate was standing washing his hands. The second mate then fired two shots in rapid

succession. I then saw the mate running aft and probably reach the after part of the hatch before the next shot was fired. The mate then made an Exclemation as if in pain. The second mate said "Ah! Ah!" The mate still continued running and reached the top of the steps leading on to the poop and fell face downwards, and dreed himself forward a little, a couple of feet probably. The second mate followed him and fired again as he reached the top of the steps, and almost immediately fired another still advancing. He then went to his room and that was the last I saw of him until he gave himself up to the men-of-war's men.

(Sgd.) James G. McDonald

End

By the Defence.

Q. When you first saw the mate coming from the pilot house and get in between the seaman

and the prisoner, did you advance towards them?

A. No Sir.

Q. About how far were you from them?

A. I should say about fifty feet.

Q. You say you did not hear what the mate said?

A. No Sir - not to the man.

Q. You afterwards heard what he said to the prisoner?

A. Yes Sir.

Q. What size man was the seaman that the prisoner had trouble with?

A. A man weighing about 160 or 170 pounds.

Q. About what height?

A. About 5 feet 7 inches.

Q. You did not see the prisoner come out of his room?

A. No Sir.

Q. You are quite positive it was ten minutes before he came out?

A. I don't think it could have been much less.

Q. Were you ever shipmates before with the prisoner?

A. No Sir.

Q. With the deceased?

A. No Sir.

Q. In whose watch were you?

A. The mates.

Q. Did you ever hear the deceased talk about the way he used to cuff the men on board the "St Dennis"?

A. I don't remember.

Q. Did you ever see the prisoner and the deceased quarrel before on the passage?

A. On one other occasion there were some words because the second mate sent a watch below without the mate having given the order.

By the Court.

Q. On board of what vessel did the shooting take place to which you refer in your statement?

A. On board the "Centennial."

Q. What was the name of the mate to whom you refer in your statement?

A. Charles H. Abbott

Q. Is the prisoner William Dinkelle the second mate to whom you refer in your statement?

A. Yes Sir.

Q. Is the prisoner William Dinkelle the man who shot the mate?

A. Yes Sir.

Q. How long did the mate Charles H. Abbott live after he was shot?

A. I should say about fifteen or twenty minutes.

Q. Did you see the deceased, Charles H. Abbott, after he was dead?

A. Yes Sir.

Q. Where was he lying when you saw him dead?

A. On the port side of the forward part of the poop.

Q. Did you see the revolver which the prisoner used?

A. Yes Sir.

Q. Would you recognize it?

A. I am not positive - it was a large sized revolver.

Q. Was it either of these two revolvers?

(Two revolvers Exhibited)

A. If it was either, I should say it was the large sized one, to judge by the colour.

Q. Do you know how many wounds the deceased had?

A. I said but three.

Q. Can you describe where the wounds were?

A. One on the right groin, one in the left side and one in the right thigh behind.

Q. How many times did the prisoner William Dinkelle fire at the deceased?

A. Five times.

(Sgd.) James G. McDonald

Q. Who else saw the occurrence?

A. All the seamen.

(Sgd.) James G. McDonald.

John Richard Brown M.D. being duly sworn, testified:—

I am a Doctor of Medicine and a medical practitioner at this port. On the 3rd inst. between 6 and 7 P. M. I accompanied the U.S. Consul in his capacity as coroner together with the jury on board the Am: ship "Centennial" for the purpose of ascertaining the cause of the death of Charles H. Abbott, late chief officer of said ship. I examined the body in the presence Coroner and his jury; it was quite warm and life could not have been extinct more than hour, there were three wounds on the body, apparently bullet wounds, two on the right side which were not likely to prove fatal and one on the left about the region of the kidney, having an inward and upward direction, and which was in my opinion the immediate cause of death. There were no other marks of violence observable on

the body. The following afternoon between 4 and 5 o'clock I examined the prisoner at the municipal jail; there were a few blood marks on the face and a cut on his nose. I had him washed and stripped and examined him more carefully; beyond the cut on his nose, there was no other mark discernable on him. Prisoner complained of a sense of soreness and constriction about the neck generally. I said nothing to account for this state - there was neither swelling or discoloration of the skin. The cut on the nose might have been caused by a blow or a fall, but in neither case a severe one.

(Sgd.) John R. Browne M.D.

By the Defence.

Q. When did you see the prisoner first?

A. On the morning of the day of the

occurrence of the shooting.

Q. After the occurrence of the Shooting?

A. I seen him come on shore after the occurrence when he was being conveyed to prison.

Q. Did you notice anything particular about his appearance?

A. I did not.

Q. How did you know that the name of the deceased was Charles H. Abbott?

A. I was told so.

Q. Then you don't know it?

A. Not beyond that I was told.

(Sgd.) John R. Brown M. D.

Isaac M. Bearse, Master of the Amn. Ship "Condemined," duly sworn, testified:—

I being absent at the time of the occurrence, I know nothing about it only what has has been told me.

By the Defence.

Q. Are you satisfied that the prisoner discharged his duty generally?

A. Generally, yes.

By the Court.

Q. When you returned on board your ship on the evening of the occurrence, did you find a dead man on board the vessel?

A. I did.

Q. Whose dead body was it that you found on board your vessel?

A. The body of Charles H. Abbott, the late Chief Officer of the said vessel.

Q. Do you recognize the prisoner?

A. I recognize the prisoner as the man who came in the capacity of second Officer on board my vessel from New York to this port.

Q. You recognize the prisoner, William Dinkelle, as the second Mate on board of your vessel?

A. I do

Q. By what name was the prisoner William Dinkelle

generally called by the crew?

A. He was usually called by the name of Kelly.

Q. Do you know how many wounds the deceased had?

A. I saw the marks of three wounds besides several bruises about the body

Q. Did you go into the room of the prisoner?

A. I did.

Q. Did you find anything in his room?

A. Nothing besides a sailor's wardrobe.

Q. Did you find a revolver, cartridges &c. in his room?

A. I found five discharged cartridges.

Q. What day and date did the occurrence happen?

A. On Saturday the 3d instant.

Q. Are these the cartridges which you hand to the Court those which you found in the prisoner's room?

A. They are.

(Sgd.) J. M. Bearse.

Andrew Wahlberg, seaman on board the American

Ship "Centennial", being duly sworn, testified:—

On the 3d of April 1880 at about 4.30 P.M. I was sitting on the poop and working at the sail, and I heard there was some disagreement forward, and I saw a Russian had a piece of board lifted against the 2d mate, and the next thing I saw the Russian came running aft onto the poop deck running round the house, the 2d mate following him, and the 2d mate told the Russian "I will make you run over the stern you s— of a b—ch". And the Russian was singing out when the mate came and asked "What's the matter?" And the 2d mate told the mate the Russian had knocked a hole in the deck. The mate asked how it happened and the Russian answered he was sending the foresail down and the foresail was lying on top of the cable, and pulling the sail down the fish hook followed the sail knocking a hole in the deck. Some time after that I saw the mate and 2d mate fighting together on the

maindeck, the mate got the 2d mate down on deck and knocked his head against the deck several times, at last the 2d mate said "you are choking me". "I kno I am" the mate answered and left him and went upon deck. I saw the 2d mate coming aft and walking down to his room, the mate telling him to remain in his room until the Captain came on board and not to come on deck again unless he wanted water. The next thing I heard the 2d mate on the maindeck singing out "Stand clear", and I heard a shot fired and looking up I saw the mate come running across the main hatch and the 2d mate fired two shots after that to the step of the poop deck. When the three shots had been fired the mate fell down just as he had come onto the poop deck, and two shots after that followed. At the last shot the 2d mate said "I'm going to get hung for you, you s— of a b— ch." After that the 2d mate went down to his place and

all hands ran forward being frightened. They called to a man-of-war and an officer and some men came on board and took the 2d mate in charge.

(Sgd.) A. G. Wahlberg.

At 12 o'clock Merid. the Court adjourned until 2 o'clock P.M.

At 2 o'clock P.M. the Court opened and Andred Wahlberg was recalled.

By the Defence:—

Q. What time elapsed between the time the deceased ordered the prisoner below and you next saw the prisoner?

A. About 8 minutes.

Q. In what watch were you?

A. In the 2d mate's.

Q. Did the prisoner ever ill treat or ill use you or any one else in the watch?

A. He never ill treated me.

Q. Did he ever ill treat any one else?

A. I do not know.

By the Court.

Q. On board what vessel did the shooting take place?

A. The "Centennial".

Q. Is the prisoner William Dinkelle the man who shot the Chief mate Charles H. Abbott?

A. The prisoner is the man.

Q. Did you see the prisoner William Dinkelle fire at the deceased?

A. I saw the last two shots.

Q. Do you know how long the deceased Charles H. Abbott lived after he was shot?

A. About 8 or 10 minutes.

Q. Did you see the deceased Charles H. Abbott after he was dead?

A. Yes sir.

Q. Where did you see the deceased after he was dead?

A. On the poop deck.

Q. Who is the Russian to whom you refer in your Statement?

A. A seaman on board the "Centennial".

Q. Do you know how many wounds the deceased had?

A. I do not.

Q. What weapon did the prisoner use to shoot the deceased?

A. I do not know. I took no notice.

Q. Did you recognize the dead body lying on the poop deck as the body of the Chief Mate, Chas. H. Abbott?

A. Yes sir.

Q. Who else besides yourself said the shooting?

A. I think all hands.

Q. You say you said two shots fired - how many did you hear?

A. I heard five shots fired.

Q. Was the prisoner excited when he fired the shots?

A. I think so.

Q. Did you see the prisoner when he came out of his room at the time he was arrested?

A. I did not.

(Sgd.) A. G. Wahlberg.

John Ireland, Seaman on board the Am: Bark "Centennial" being duly sworn, testified: —

On Saturday the 3rd of April 1880 between 4 and 5 P.M. as near as I can recollect the Second Mate struck one of the men and the man raised a piece of board to hit him back, but without doing so ran aft onto the poop. The Mate came out of the pilot house and stopped the man and the Second Mate and asked what the trouble was about. The Second Mate told the Mate that the man had let the fishhook fall on deck and the mate prevented the second mate from striking the man and sent them both forward. After going forward the man commenced to roll up sails and the second mate came up and kicked him. The Mate hit the second mate on the head and the second mate returned the blow, they clinched and fell, the Mate falling on top. The Mate was pounding the second mate's head against the deck choking him. The Second Mate

told him he was choking him and the mate said "he found he was," and asked him if he had had enough. The mate answered that he had. The mate then let him up and told him to go to his room and to remain there until the Captain came on forward unless he wanted water. The second mate went to his room and remained there between 5 & 10 minutes, and when he came up again he walked forward on the starboard side where the mate was washing himself and said to the mate "Fight me now" and fired at him. The mate jumped up and started to run aft, he followed the mate aft and fired a second time, and fired the third shot when the mate was running up the steps of the poop. The mate fell and the second mate fired two more shots. The second mate then walked to his room. Some of the ship's crew ran to the poop to pick the

mate up, others ran forward and sung out to the men-of-war.

(Sgd.) John Ireland.

By the Court.

Q. Is the prisoner William Dinkelle the second mate to whom you refer in your statement?

A. Yes sir.

Q. Do you recognize the prisoner William Dinkelle as the man who shot the first mate Chas H. Abbott?

A. Yes sir.

Q. How many shots did the prisoner fire at the late Charles H. Abbott?

A. Five shots.

Q. Is the deceased Charles H. Abbott the mate to whom you refer in your statement?

A. Yes sir.

Q. What was the name of the man-of-war from which assistance covered?

A. The "Scourger".

Q. How long did the deceased Charles H. Abbott live after he was shot?

A. From 15 to 20 minutes.

Q. Did you see the body of the deceased after he had been shot?

A. Yes Sir.

Q. Did you recognize the dead body you saw as the body of the deceased Charles H. Abbott the late first mate of the "Centennial".

A. Yes Sir.

Q. Do you know what weapon the prisoner William Dinkelle used to shoot the deceased Charles H. Abbott?

A. No more, than that it was a revolver.

Q. Do you know how many wounds the deceased Charles H. Abbott had?

A. Three wounds.

Q. In whose watch are you?

A. In the mate's.

Q. Where was the deceased Charles H. Abbott standing when the prisoner fired the first shot?

A. Between the main hatch and the forward house.

Q. Where were you when the shooting took place?

A. On the port side of the poop.

Q. How near were you to the deceased when the shooting took place?

A. When the deceased fell I was not more than three feet distant.

Q. Were you in a position to see the whole occurrence?

A. Yes Sir.

Q. Was any obstacle in the way to prevent you from seeing all that occurred?

A. No Sir, nothing.

Q. What were you doing when the shooting took place?

A. I was sewing sails.

Q. Did you see the prisoner come out of his room?

A. Not until he was on deck.

Q. Do you know who arrested the prisoner?

A. An officer and a bluejacket from the "Swinger".

Q. Did the officer take the prisoner on board with him?

A. Yes sir, he took him away from our vessel.

(Sgd.) John Ireland.

Julius Lucke, seaman on board the American Ship "Centennial", being duly sworn testified:—

On the 3rd of April in the afternoon between 4 & 5 o'clock as near as I can tell, a sail dropped on the cable and the second mate told a man to pull it off, the fishhook was lying underneath the sail and dropped on deck leaving a mark. The second mate then struck the man and the man lifted a piece of board but did not hit the second mate. The man then dropped

the piece of board & ran and the second mate picked up a piece of wood & ran after him, and the second mate laid his piece of wood on the starboard corner of the house, and both ran round the house until the Chief mate stopped them, what was said I did not hear. The man then went about his work again on the maindeck and the second mate came off the poop and kicked him. The mate then reached out for the second mate, and both commenced to fight, and the mate threw the second mate down on deck and bumped his head on the deck. The second mate then sang out "You are choking me Sir" - "I know I am" said the mate. "That's enough" said the second mate, and the mate asked "Will you ever strike me again?" The second mate replied "You strike me first," and the Mate said "You got enough" and let him up. The second mate then went up to the poop and the Mate stopped on deck and sang out

to the second mate "You ought to know me better than that, you caught hold of the wrong chicken. Now go down to your room and stay there until the Captain comes on board". Next I saw the second mate come rushing out of the pilot house and coming down on the maindeck and he fired one shot, and the Mate came running across the main hatch to the life rail when the second mate fired another shot and the Chief mate let a yell out of him. When the mate was running up the ladder the second mate fired another shot from the hatch and the mate dropped on the poop, then the second mate was standing on the ladder and fired two more shots right over him. I came down from aloft and the mate was drawing his last breath. I said no more of the second mate until an officer came on board and put him in irons.

(Sgd.) Julius Lucke

By the Defence.

Q. When the deceased let the prisoner get up from deck was his face covered with blood?

A. I could not see.

Q. Where were you when the shooting occurred?

A. On the port yardarm of the foretopsail yard.

Q. Could you see all that took place as you have stated from that position?

A. Yes sir.

Q. After you came from aloft did you ask any one on deck as to what had occurred?

A. I might have done so - I don't recollect.

Q. But you consulted with more than one of the men as to what was to be said in Court today?

A. We have spoken about the case, but not as to what was to be said in Court.

Q. When speaking about it, did you not ask "Did you see so and so" - "Did you see that?"

A. No sir.

Q. Let us know what was spoken about it?

A. Nothing particular was said. We have spoken about the case every day.

Q. You have expressed an opinion as to what would be the result of this trial?

A. Yes, nearly everyone has expressed an opinion.

By the Court.

Q. Is the deceased Charles H. Abbott the mate to whom you refer in your statement?

A. Yes sir.

Q. Is the prisoner William Dinkelle the mate to whom you refer in your statement as the second mate?

A. Yes sir.

Q. Do you recognize the prisoner William Dinkelle as the man who shot the deceased Charles H. Abbott?

A. Yes sir.

Q. Did you see the deceased Charles H. Abbott after he had been shot?

A. Yes sir.

Q. Do you know how long the deceased Chas H. Abbott lived after he had been shot?

A. I do not.

Q. Did you see the deceased after he was dead?

A. Yes sir.

Q. How many shots did the prisoner William Dunkelle fire at the deceased Charles H. Abbott?

A. Five shots.

Q. Do you know how long a time elapsed between the time the prisoner went below to his room and came on deck again?

A. I think about 10 minutes.

Q. Do you know what weapon the prisoner used when he fired at the deceased, Chas H. Abbott?

A. No sir.

Q. Do you know whether it was a gun or a pistol?

A. It was a pistol.

Q. Who arrested the prisoner William Driscoll on board the "Centennial"?

A. An English officer.

Q. Do you know to what vessel the officer belonged?

A. I do not know her name - she was a barkentine.

Q. Did the officer take prisoner with him?

A. Yes Sir.

Q. Did you hear the second mate tell the chief officer that he had had enough when they were fighting?

A. No Sir, it was spoken so low I could not hear it.

Q. When did you come down from aloft and on which side?

A. I came down on the port side.

Q. Did you come down before, during or after the fight?

A. I came down after the fight - after the shooting was over.

(Sgd.) Julius Lemcke.

William Forster, seaman on board the American ship "Centennial," being duly sworn, testified:—

On the 3rd of April in the afternoon we were making up the foresail when the second mate struck one of the men, and the man took a piece of wood and tried to strike the second mate back, but dropped the piece of wood and ran aft, and the second mate followed him. They ran back again forward when the mate stopped them and the mate said something to the man but I don't know what it was, and told the second mate never to strike a man. And the mate went down on the deck and the second mate after him. The second mate kicked the seaman in the mouth. The Mate told the second mate "Why do you strike a men after I tell you not to do so?" and ordered the second mate below to his room to remain there until the Captain came on board. The second mate went below and after remaining

about 8 or 10 minutes came on deck again and I said him fire two shots from the mainhatch. The mate was standing by the Steward's room. The third shot was fired between the mainhatch and the poop, and the mate fell as soon as he came to the poop. The second mate fired two shots after that and went down below to his room again.

(Sgd.) William his x mark Foster

By the Court.

Q. Do you recognize the prisoner William Dinkelle as the second mate on board the "Centennial"?

A. Yes Sir.

Q. Do you recognize the prisoner as the man who shot the deceased, Charles H. Abbott?

A. Yes Sir.

Q. Is the deceased, Charles H. Abbott, the mate of the "Centennial" to whom you refer in your statement?

A Yes Sir.

Q. Do you know how long the deceased, Charles H. Abbott, lived after he had been shot?

A. About half an hour.

Q. Did you see the deceased, Charles H. Abbott, after he was dead?

A. Yes sir.

Q. How many shots did the prisoner fire at the deceased?

A. Five shots.

Q. Where were you at the time of the shooting?

A. I was standing abreast of the mainmast.

Q. Where were you when the prisoner struck the seaman?

A. I was standing amidships.

Q. What were you doing?

A. Making up the sail.

Q. Where were you when the prisoner came out of his room before he fired the first shot?

A. Abreast of the mainmast.

Q. Where were you when the deceased fell down on the poop?

A. At the break of the poop.

(Sgd.) William his × mark Forster

The Court adjourned at 4 o'clock P.M. until Friday the 9th of April 1880 at 10 o'clock a.m.

Friday April 9th 1880 at 10 o'clock a.m. the Court opened.

Edward Kickford, seaman on the American ship "Centennial", being duly sworn, testified:—

Myself and another hand on board the "Centennial" were aloft unbending the foresail, and as we were hauling the sail aft the other man had hold of the end of the sail and the sail caught the fishhook which fell and made a hole in the deck. The second mate then struck the man who took up a piece of wood to strike the mate back again, but without striking him threw the piece of wood down and ran aft on the starboard

side, the second mate running after him. The mate met them on the port side and sent the Russian to his work again, and told the second mate not to strike the man again. The man came to his work right alongside of me when the second mate kicked him in the mouth. The mate then struck the second mate who returned the blow saying "that means fight," and striking each other a blow or two the mate got the second mate down, and kneeling on top of him held him by the throat and asked him if he had enough, and whether he would ever do it again. The second mate said "No, let go, you are killing me". The mate said "I know I am", and let the second mate up, and told him to go to his room and remain there until the Captain came on board. The second mate went then to the cabin and about 4 or 5 minutes after I saw him standing at the pilot house

winded with all the blood on his face. After standing there for three or four minutes he rushed out of the cabin with a revolver in his hand, rushed towards the mate and said "Fight me now - stand clear" - and fired, the first shot missed the mate who then jumped away from the steward's door and ran towards the poop. The second mate then fired again and just as the mate was getting on the top of the steps leading to the poop the second mate fired again and the mate either stumbling or through the effects of the shot fell face first into a sail that was laying on the poop. The second mate followed him up and standing over him fired twice. Another man and myself ran to the poop and turned the mate on his back, the second mate had then gone to the cabin. I took the mate's head on my arm, tore

open his shirt and singlet and asked him if I could do anything for him. He said "No," and breathed for perhaps two minutes longer and then he was dead on my arm. A man-of-war's boat's crew came aboard and sent me to the man-of-war for a doctor. While I was away to the man-of-war they took the second mate away. When the doctor came on board he said he could not do anything - the mate was dead.

(Sgd.) Edward Kickford

By the Defence.

Q. What was the man doing when the prisoner kicked him?

A. He was rolling up the foresail alongside of me.

Q. Did you hear the doctor say that he could not do anything & that the mate was dead?

A. Yes sir.

By the Court.

Q. Is the prisoner William Dunkelle the second mate to whom you refer in your statement?

A. Yes sir.

Q. Do you recognize the prisoner William Dunkelle as the man who shot the chief mate Charles H. Abbott on board the "Centennial"?

A. I do - it is the same man.

Q. What weapon did the prisoner use to shoot the deceased?

A. A large sized revolver.

Q. Would you recognize the revolver?

A. I believe I would.

Q. Is it one of these two? (Two revolvers Exhibited)

A. Yes the large sized one is the weapon, as far as I know.

Q. Have you ever seen this revolver before? (Small revolver Exhibited)

A. Yes sir.

Q. When and under what circumstances did you get this revolver?

A. In New York, while I was keeping watch the late Chief Officer Mr Charles H. Abbott used to lend it to me

Q. To whom did the revolver belong?

A. Mr Charles H. Abbott.

(Sgd.) Edward Hickford.

Jacob Johnson, seaman on board the Am: ship "Centennial," being duly sworn, testified: —

I said the man whom the second mate was was quarreling with came running aft round the house on the starboard side, and when he came round the corner of the port side of the house the mate came up and stopped him, and the second mate came also and the mate told the second mate not to strike the man. The mate and second mate after that went down to the main deck where we were rolling up sails. I next saw the mate and second mate fighting together, and the mate

knocked the second mate down on the deck and kept him beneath him, held him by the throat and asked him if he had had enough. The second mate replied "yes". The mate then let the second mate get up and told him to go below till the Captain came on board. The second mate did so, but after a while the second mate came up again and went down to the main deck, and the next thing I heard was a shot, and I saw when the mate was running up the steps that lead to the poop and fall down on deck. The second mate followed the mate closely and after he came on the poop he shot twice at the mate and went down after that.

(Sgd.) Jacob Johnson,

By the Court.

Q. Is the prisoner William Dunkelle the second mate of the "Centennial"?

A. Yes sir.

Q. Do you recognize the prisoner William

Dinkelle as the man who shot the late Chief officer, Mr Charles H. Abbott?

A. Yes Sir.

Q. Where were you standing when you heard the mate ask the second mate if he had enough?

A. At the poop.

Q. Did you hear any words passed between the mate and second mate after the second mate came out of his room?

A. I don't remember.

(Sgd.) Jacob Johnson.

William Smith, seaman on board the Am: ship "Centennial," being duly sworn, testified:—

I saw the second mate striking one of the men - the man lifted a piece of wood to strike back again, but did not strike, he dropped the piece of wood and ran off. The mate came out and stopped him & asked

what the matter was. What the mate said I did not hear. I was forward. I only saw him left his hand as much as to say, go forward! go to work! When they went forward I saw the second mate kick the man in the mouth. Then the mate turned round and clinched with the second mate, the second mate turned round and struck back at the mate, and when they had both fallen on deck the mate asked the second mate if he had had enough, and the second mate replied yes! The mate then told the second mate never to strike a man after he had stopped him from striking him, and ordered the second mate to his room not to come on deck again unless he wanted water. We all went to work again. I stood by the main hatch when I saw the second mate coming down the steps running towards the main hatch

and when he was in the middle of the main deck I saw him pointing a revolver. I heard him say something, but did not understand what it was. I did not notice at first at whom he was pointing the revolver, but I heard two shots fired in rapid succession. I then saw the mate pass the main hatch running aft followed by the second mate with a revolver and who fired once again. I then saw the mate falling on the poop, the second mate fired two shots more and ran to his room.

(Sgd.) William Smith.

By the Court.

Q. Do you recognize the prisoner William Dinkelle as the second mate of the "Centennial".

A. Yes Sir.

Q. Do you recognize the prisoner William Dinkelle as the man who shot the Chief officer of the "Centennial" Mr Charles H. Abbott?

A. Yes Sir.

Q. How many shots did the prisoner fire?

A. Five shots.

Q. Do you know how many wounds the deceased Charles H. Abbott had?

A. Yes Sir.

Q. State how many.

A. Three Sir.

Q. Did you see the deceased after he was dead?

A. Yes Sir.

Q. In what part of the ship were the mates when they were fighting?

A. At the break of the poop.

(Sgd.) William Smith.

Ernest Ferrari, seamen on board the Am: ship "Centennial," being duly sworn, testified, By the Court:—

Q. Is the prisoner William Dinkell the second mate of the "Centennial"?

A. Yes Sir.

Q. Did you see the body of the deceased?

A. I did.

Q. Whose body was it?

A. The body of the first mate of the "Centennial". (Sgd.) Ernest Ferroni

Joseph Green, a municipal policeman, being duly sworn, testified:—

By the Court:—

Q. Is the prisoner William Dunkelle the man whom you arrested on board H. B. M. S. "Swinger"?

A. Yes sir.

Q. When you arrested the prisoner in what state did you find him?

A. He had some blood adhering to his face.

Q. Do you recognize these two revolvers?

(Revolvers exhibited)

A. Yes sir, I said them taken out of the prisoner's chest.

(Sgd.) Joseph Green

James Kerr, seaman on board the bem-
"Lemuel", being duly sworn, testified:-

We were making up the foresail,
it came down on top of the cable, and a man
went to clear it off the top of the cable, by the
clearing of it he hauled the fish pond gut down
on deck, and the second mate hauled off and
gave the man a welt across the jaw and
called him a s - of a b - ch. The man lifted
up a piece of wood and was going to strike
the second mate with it, the second mate
struck the man again and the man ran
aft, the second mate after him with a piece
of wood. They ran around the poop and the
mate came up to them and interfered, and
told Mr Kelly, the second mate, for never to
mind striking the man, and the second mate
went forward and kicked the man in the
mouth while he was making up the sail

Then Mr Abbott hauled Mr Kelly, the second mate, back and Mr Kelly struck back at Mr Abbott, and the two men clinching Mr Abbott knocked Mr Kelly down and was choking him and asked the second mate if he had got enough. The second mate said "yes". Then Mr Abbott let him up and said to the second mate "you might have known better than to strike me", and ordered him to his room not to come on deck again until the Captain had come on board. Mr Kelly, the second mate, was about 10 minutes in his room when he came up and stood about two or three minutes in the pilot house, came right for Mr Abbott, shoved a revolver out, said "You s - of a b - ch, fight me now". Then he fired one shot, the second shot went into the steward's room, then ran right after Mr Abbott and fired the third shot when he was going up the poop. Mr Abbott fell down on top of the poop and the second mate

fired two more shots, after that he went below to his room.

(Sgd.) James his mark X Kerr.

By the Court:-

Q. Is the prisoner William Dinkelle the man you refer to as the second mate called Mr Kelly?

A. Yes sir.

Q. On what date of the month did the shooting take place?

A. On the 3rd of April.

Q. At about what time?

A. Between 4 and 5 o'clock.

Q. Do you recognize the prisoner as the man who shot the Chief mate Charles H. Abbott on board the "Centennial"?

A. Yes sir.

Q. Do you know how long the Chief

mate McAbbott lived after he was shot?

A. Between 5 and ten minutes.

(Sgd.) James his X mark Keeve.

John Peterson, Sergeant Municipal Police Force, duly sworn, testified:—

By the Court:—

Q. Do you recognize the two revolvers which are placed before you?

A. I do.

Q. Where did you see them before?

A. In the Municipal Police Office.

Q. How did they come to the Police Office?

A. They were brought in the prisoner's chest.

Q. Were both or only one in the chest?

A. Both Sir.

(Sgd.) John Peterson.

The prosecution closed.

The defence offered the

prisoner William Dinkelle as witness in his own behalf, who being duly sworn, testified:-

I was unbending the foresail and mainsail on Saturday afternoon the third of April between 3 & 4 o' clock. The mate was in his room at the time. There were four sailmakers sewing at the sails on the poop. Three men on the foretopsail yard scowing the brass work and two men were on the foreyard sending down the foresail. The remainder of the crew assisted me to take care of the foresail as it came down. One of the men handled the sail rather roughly which caused the fishhook to fall down on deck. I told this man about it and he answered me rather saucily in his own language, Russian, which I could not understand. I took hold of him and shook him, but did not strike him. When

I let him go again he raised a piece of wood against me. I made him drop the wood and he ran aft and I followed him and told him that if ever he attempted to strike me I would make him jump over the stern. By this time the mate had come out of his room, he wanted to know what was the matter, and I told him that the man had made a big hole in the deck forward. The mate then asked the man how it happened, the man said he did not see the hook as he was hauling the sail away and the mate sent the man forward. As I came forward I passed this Russian and he made some remark in Russian. I gave him a kick and lose my shoe. Then the mate made for me and struck me, after he had struck me he clinched me and got me down, but his knee on my breast and was choking me with both hands, he choked me to such an extent that

s." I was smothered with blood. I sung out that he was choking me, and he replied that he knew it. He asked me if I had had enough and I answered "yes". After I got up it took about two or three minutes before I knew what way to take to go aft to my room. The mate then said "You ought to know better than to strike me". I replied that I had not struck him and said you are a fine officer, you are not worth the position you hold. He then ordered me to my room and I went. I went to the mate's room, knowing his revolver to be handy in his desk and went up as far as the pilot house window, and then altered my mind that I would take my own. I then took my own, ran on deck, sang out "stand clear", and fired five shots in succession, while I was giving the mate

ran. I did not know who I shot or who I did not shoot. I believe I shot the steward for I saw some sailors carrying him aft.

(Sgd.) Wm Dinkelle.

In conclusion the Counsel for the defence addressed the Court.

At 2.30 P.M. the Court retired for deliberation and on returning at 4 o'clock P.M. announced that the Court reserves its decision and that the Court stands adjourned until further orders, as the proceedings in the case will be forwarded to the U.S. Minister in Tokei.

Decision.

In the Court of the U.S. Consulate
Osaka and Hiogo.

Hiogo, Friday April 9, 1880

The United States of America

versus

William Dinkelle (an American Citizen)

Second Mate on board the American

ship "Centennial".

Having heard and tried

the foregoing Charge filed in this

Court on the 5th day of April A.D.

1880, &c &c (See Enclosure 5, which

the same.)

In the Court of the U.S. Consulate

Hiogo, Japan, April 28, 1880.

I, the undersigned Consul of the U.S. at Osaka & Hiogo, Japan, do hereby certify that the above & foregoing is a true copy of the record & proceedings in the case "The U.S. of America versus William Dinkelle", on file in this Consular Court.

In witness whereof I have hereunto set my hand and the seal of this Consulate the day and year above written.

Consular seal

(Sgd.) J. Stabel

U.S. Consul acting judicially

No

Enclosure # 5.

Copy.

In the Court of the United States Consulate
Osaka and Hiogo,
Hiogo, Friday April 9th 1880.

The United States of America
versus
William Dinkelle (an American citizen)
Second Mate on board the American ship
"Centennial".

Having heard and tried the foregoing charge, filed in this Court on the 5th day of April A. D. 1880, wherewith William Dinkelle was charged with having on the third day of April 1880 between four and five o'clock P.M. in the harbor of Kobe (Hiogo) on board the ship "Centennial" feloniously, wilfully and of malice aforethought fired and discharged a pistol (revolver) loaded with powder and ball at one Charles H. Abbott, late first Mate on board

the American ship "Centennial", and gave him several mortal wounds of which the said Charles H. Abbott languished a short time and then died, - I find William Dinkelle guilty of murder in the first degree, I adjudge and sentence him the said William Dinkelle to suffer the penalty of death in such time, place and manner as the United States Minister to Japan by his warrant may direct.

Sgd. J. Stahel
United States Consul,
Acting judicially.

Seal of the U.S. Consulate Osaka & Hiogo

We, the undersigned Assessors in the case of the "United States of America versus William Dinkelle" are of the opinion that the accused, William Dinkelle, is guilty of murder in the first degree and therefore we concur

in

in the foregoing finding and verdict.

Sgd. J. A. Weed
" J. F. Gorham
" R. Henry Davis
" R. G. Walsh

M. Adee

The President:

I have the honor to submit for your consideration, and such executive action as you may deem necessary and proper in the premises, the facts and judicial proceedings in relation to the case of William Dinkelle, an American citizen and lately second mate on board the American ship "Centennial", who has been recently tried before the United States Consular Court at Osaki & Hiogo, Japan, for the murder of Charles N. Abbott, the first mate of the same vessel on the 3rd. of April last. He was arraigned and brought to trial on the 5th. of the same Month before Julius Stahl, Esquire, United States Consul for Osaki & Hioga, with

with J. A. Weed, J. F. Gorham, R. Henry Davis and R. G. Walsh, all citizens of the United States, sitting with him as assessors (Revised Statutes section 4106) On the 9th. of April the trial resulted in a conviction of the accused of murder in the first degree, the Consul and assessors all concurring in the verdict, upon which the Consul gave judgment and pronounced sentence as follows; "I find William Dinkelle "guilty of murder in the first degree. "I adjudge and sentence him the said "William Dinkelle, to suffer the penalty "of death in such time, place and "manner as the United States Minister "to Japan by his warrant, may direct." (Revised Statutes Section 4103.)

On the 29th. of April, the Consul forwarded a transcript of the record

and

and proceedings to Mr. Bingham at Tokei, and in his despatch No 1113 of the 8th. of May, the Minister transmits copy of all the papers and correspondence for the consideration of the Department and the President. In his despatch Mr. Bingham says, "I was constrained under sections "4102 and 4103 of the Revised Statutes "to approve the conviction but to with- "hold the warrant for the execution of "the sentence until, as provided by sec- "tion 4103, the same might be submit- "ted to the President."

The facts in relation to the homi- cide will be best understood from the testimony of James G. McDonald, a seaman on board the "Centennial, who appears to have been an eye witness of the whole affair, and who was also the prosecu- ting witness who swore to the infor-

mation

mation upon which Dinkelle was tried. I therefore append a copy of this as taken from the record of the proceedings.

Testimony of James G. McDonald.

"On Saturday the 3rd. of April, "1880, about 5 o'clock there was trouble "between the second mate and one of the "men. The man ran aft, went on the "starboard side of the after house, crossed "the deck then to the port side and "was coming forward and reached the "forward part of the house, and the "mate came from the pilot house, "ran toward the man and stopped him. "What remarks he made to the man "I do not know. The second mate had "been following the man all this time, "and coming to where the mate and the "man were standing, the mate interposed

himself

"himself between them and told the second
"mate not to strike the man again. The
"second mate desisted for the time being.
"What else passed between them, I do not know.
"The next I know was we were making up
"sails when I heard the mate say to the
"second mate, "How dare you strike a man
"when I tell you not to." After looking
"up it seemed to me that the mate had
"either pushed or struck the second mate
"violently. The second mate then struck
"the mate and they both clinched and strug-
"gling for a moment or two they fell, the
"second mate falling beneath. The mate
"then got the second mate by the throat
"with both hands; the second mate said
"'You are choking me'; the Mate said,
"'I know it' and asked the second mate
"if he had had enough. The second
"mate said "Yes". The mate repeated

the

"the question still with his hands at the
"throat of the second mate, at the same
"time striking the second mates head
"against the deck several times. The
"second mate then said "enough." The
"Mate then let him up and ordered him
"to his room and told him to remain
"there until the Captain came on board;
"also said to the second mate "You ought
"to have known better than to strike me."
"The second Mate remained in his room
"about ten minutes as near as I can tell,
"the hands meantime had resumed their
"work at the sails. I did not see the
"second mate come out of his room; but
"heard him speak and say to the mate
""Fight me now." When I looked up I
"saw the second mate on the main hatch,
"he had a revolver in his hands which
"he pointed towards the steward's door

where

"where the mate was standing washing
"his hands. The second Mate then fired
"two shots in rapid succession. I then saw
"the mate running aft and probably reach
"the after part of the hatch before the next
"shot was fired. The mate then made an
"exclamation as if in pain. The second
"Mate said "Ah! Ah!" The mate still con-
"tinued running and reached the top of
"the steps leading on to the poop and
"fell face downwards, and drew himself
"forward a little, a couple of feet proba-
"bly. The second mate followed him
"and fired again as he reached the top of
"the steps, and almost immediately fired
"another, still advancing. He then went
"to his room and that was the last I saw
"of him until he gave himself up to the
"Man-of-war's men."

(Sgd.) "James G. McDonald."

July 27. 1880.



United States Legation,
Tokei, Japan, May 8, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

I have the honor to transmit herewith duplicate account of my salary for the Quarter ending March 31, 1880.

I have the honor to be,
Sir,
Your obedient servant,
D W Stewart
Secretary of Legation

Filed

Ack + approve C. P

Made

Sent & writ approved June 14. 1880. Mr Caldwell

No 1114.



United States Legation,
Japan,
Tokei, May 8, 1880.

Mr Bingham
to the
Hon. Secretary of State.

Subject

In accordance with Instruction 486 Mr Bingham addresses a note to Mr Inouye, in which he protests against the excessive duty proposed to be laid by the new tariff upon Kerosene and other staple articles imported from America to Japan. Mr Bingham has also a personal interview with Mr Inouye and repeats his reasons for objecting to the excessive duties sought to be laid upon American imports.

Enclosure.

Mr Bingham to Mr Inouye, April 24, 1880.

No 1114.

United States Legation,
Japan,
Tokei. May 8, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

Referring to Instruction No 486 in relation to the proposed Japanese tariff and its discriminations against exports from the United States of articles of necessity to this people, I have the honor to acquaint you that, in accordance with your Instruction, I addressed to His Excellency Mr Inouye, His Imperial Japanese Majesty's Minister for Foreign Affairs, a respectful protest against the proposed tariff so manifestly unjust to our people, and, in my opinion, equally unjust to the people of Japan. I beg leave to enclose herewith a copy of my communication to Mr Inouye, dated the 24th ultimo.

You will please observe that I followed literally

literally your Instruction in saying to the Minister that the proposed tariff could not but be regarded by our Government as a hostile measure and most unexpected as a response to the constant and friendly efforts of the United States to aid the resumption of the control of the revenue system of Japan by that Government. I also said in my note that the United States ask no special discrimination in favor of American productions, but look for no less a measure of commercial favor than is meted out by Japan to the most favored nation; and that in thus protesting against the proposed discrimination against my country, I was not forgetful that equality is justice.

On the 4th instant I had a personal interview with the Minister on the subject, and explained more fully to him the impolicy of the proposed discrimination. He said he would carefully consider all that I had said, and assured me that His Majesty's Government gratefully

acknowledged

acknowledged the uniform friendship of the United States, and that he knew full well that no other Government had manifested so much good will towards Japan.

In this interview His Excellency remarked that I had underestimated the average duty proposed upon British productions, and added that it was about ten per cent ad valorem, to which I replied that from advices received since writing my letter of protest of the 24th ultimo I was satisfied that the rates of duty proposed to be laid upon Kerosene and other Exports from the United States to Japan was thirty per cent and upwards, so that the retative discrimination in the proposed tariff against us and in favor of Great Britain remained the same as before stated by me.

I shall not fail to forward to you any reply that may be made by His Excellency Mr Inouye to my protest.

I have the honor to be, Sir,
Your obedient servant,
Mc A. Pringle

No 1114.

Enclosure.

No. 1205.

United States Legation,
Tokei, April 24, 1880.

His Excellency,
Inouye Kaoru,
H. I. J. M's Minister for Foreign Affairs.

Sir:

Referring to our conversation of the 12th instant when I had the honor to acquaint Your Excellency that I had received instruction from my government to protest against the impolicy and injustice of the discrimination made in the tariff project, I now beg leave to point out that the official report of the foreign commerce of the Empire of Japan for the half year ended the 31st December last shows that the import of domestic productions from Great Britain for that period was of the value of yen Ten million (£1,000,000) and that the import of domestic productions

from the United States for the same period was of the value of yen one million three hundred and twenty nine thousand (¥ 1.329 000.00) only; while the export of domestic productions from Japan to Great Britain was of the value, in round numbers, of yen three million one hundred and fifteen thousand (¥ 3.115.000.00) and that the export thereof to the United States for the same period was of the value, in round numbers, of six million seven hundred and sixty four thousand yen (¥ 6.764.000.00).

Your Excellency will note that the United States purchases five times more from Japan of her domestic productions than Japan purchases from the United States; and also that the United States purchases two fold more from Japan than does Great Britain, while Great Britain, on the other hand, sells of her domestic productions to Japan threefold more than she purchases from Japan. The great bulk of Great Britain's exports to Japan consists of cotton yarns, thread and cloth, while nearly the entire export of the United States to Japan consists of kerosene and cotton wicks for burning the same.

By Your Excellency's proposed tariff these staple productions of the United States are to be charged a duty equal to twenty five (25) per cent upon the cost value thereof; while the chief staple productions of Great Britain imported into Japan are not thereby to be subjected to a duty greater in the aggregate than 8 per cent on the cost value thereof; in other words, not more than one third the duty imposed upon the cost value of the exports from the United States (see "proposed import tariff") No. 77, also 84 to 92 and 249 to 250 and 800.)

It is difficult to perceive any good reason for thus favoring Great Britain's exports over those of the United States into this Empire.

The supposed object of the tariff revision proposed by Your Excellency's Government is to obtain an increase of revenue from imports. To lay a rate of duty upon the cotton productions imported by Great Britain into Japan equal to the rate proposed upon the kerosene imported by the United States, would give a very large increase of revenue, equal to, if not

greater than all the revenue which could be obtained under the proposed tariff rates. The American kerosene and kerosene burners are supposed to be as necessary to this people as the British cotton fabrics.

I am instructed by my Government to say that to lay a duty upon a staple necessity of the United States exported thereform to Japan more than double that laid upon the staple necessities produced in any other country "cannot "but be regarded by my government as "a hostile measure, and most unexpected "as a response to the constant and friendly "efforts of the United States to aid the resump- "tion by Her Imperial Japanese Majesty's "Government of the control of its entire "revenue system".

In the spirit of good will and with a sincere regard for the highest interests of Your Excellency's Government, on behalf of my Government I protest against the proposed unjust discrimination.

My Government does not ask any

discrimination in favor of the products of the United States, but has the right to demand and "look for no less a "measure of commercial favor" ... than is accorded by His Imperial Japanese Majesty's Government to the most favored nation.

I trust it will be the pleasure of His Imperial Majesty's Government to correct and equalize the "proposed import tariff" not forgetful that equality is justice.

Accept, Sir, the renewed assurances of my highest consideration.

(Signed) Jno. A. Bingham.

Ack as interesting and express the hope that the concessions asked may not long be deferred. C. P.

F.R.

Wadie

Filed as directed by Mr Payson June 14. 1880. Mr Caldwell

No 1115.



United States Legation,
Japan,
Tokei, May 8th, 1880.

Mr Bingham
to the
Hon Secretary of State.

Subject.

The "Aikokusha" (patriotic society) present a petition to the Emperor praying for the establishment of an Assembly and Constitution. The petition refers to the oath taken by the Emperor upon his accession by which he bound himself to maintain "the five principles", and alludes to the fact that those principles include a promise of constitutional government. Mr Bingham encloses a translation of the petition as given in the "Hochi Shimbun".

Enclosure.

Translation of the petition of the "Aikokusha".

No 115.

United States Legation,
Japan,
Tokei, May 8, 1880.

How William M. Evarts,
Secretary of State,
Washington, D.C.

Sir:

With my No 219 dated 20th April 1875 I transmitted to the Department a translation of a decree signed by His Majesty the Emperor of Japan under date April 17 1875, in which I noted as a subject of congratulation that His Majesty therein declared that on ascending the Imperial throne he "took an "oath to maintain the five principles, to "govern in harmony with public opinion and "to protect the rights of his people", (see Foreign Relations, Part 2, 1875, pages 794 - 795). In that despatch I remarked that "no information "has (had) been furnished me which enables "(enabled) me to specify the 'five principles' "referred to in this decree".

This information now comes to me in one

one of the many petitions recently presented by the people of the Empire to His Majesty's Government praying for the establishment of a written constitution and a national assembly to be elected by the people. One of these petitions was published in a Japanese journal, the Hochi Shimbun, on the 13th and 14th of April last, a copy of which petition, as translated by Mr. Thompson, I have the honor to enclose.

The petition sets forth that the five principles which His Majesty the Emperor declared upon his oath it was his purpose to maintain are as follows:—

1. Deliberation in assemblies shall be widely fostered and every point decided by public discussion.
2. The hearts of the high and the low must be united in the practice of virtue.
3. Let everyone, from the officials to the common people, be free to pursue his object (happiness) without molestation.
4. Evil customs of old times must be

broken

broken up and the Government founded
on principles universally admitted.
5. Knowledge must be sought for
throughout all the world, and the
foundation of the Empire must be
firmly established.

The petition further
states that His Majesty upon as-
cending the throne not only took
the oath, but also issued a proc-
lamation declaring his purpose "to
"lay the foundation of a constitutional
"Government", and that in His Majesty's
proclamation are these words, "I trust to
"have the felicity with you of establishing
"a constitutional government".

Although all that the
Emperor declared it his purpose to do
has not been yet fully effected, it must
be conceded that much has been done and
attempted to be done by His Majesty to
carry out what he declared his oath -
required of him, 'to govern in harmony
with public opinion and to protect the
rights of his people".

J

I have the honor to be,
Sir,
Your obedient servant,
Wm. A. Bingham

No 1115.

Enclosure.

Translation

From the "Hochi Shimbun"

April 13th & 14th 1880.

It appears from the "Osaka Nippo" that the substance of the petition of the "Aikokusha" (Patriotic Society) for the establishment of a National Assembly is as follows: (Ed.)

We citizens of Japan venture to offend Your Imperial dignity by presenting our petition to Your Majesty. When Heaven created man it endowed them with freedom, and with a natural capacity for happiness. All men are bound

to keep and preserve entire this gift.
Truly this is a great responsibility,
inasmuch as they, the people, in the
performance of their duty and main-
tenance of their rights should establish
governments and enact laws.
But hitherto in our land, the rulers
only have been responsible for the govern-
ment of the country, while the people
have all along regarded themselves as
excluded from participation therein.
This condition of things is not in harmo-
ny with natural right. Hence Your
Majesty immediately after your ac-
cession to the throne, first of all decreed
to take an oath of five articles, and
then again issued a proclamation
of five articles making known
your Imperial purpose to lay the

foundation of a Constitutional Gov=
ernment. When these five articles of
the oath are attentively considered
they all show that it was Your Imperial
purpose to establish a National Assembly.
The first article says: "Deliberation
"in assemblies shall be widely fostered
"and every point decided by public
"discussion". Now the establishment
of a National Assembly is the best
possible way of fostering such deliberation,
and of really reaching such decision by
public discussion. It will promote
popular deliberation extensively because it
will necessitate the assembling of the
representatives of the people of the whole land.
The second article says: "The hearts of
"the high and the low must be united
"in the practice of virtue". Now in order

to so unite the hearts of the high and the low in fact, a National Assembly must be established. As a despotic government is a most effectual means of separating between the high and the low, so the establishment of a National Assembly, by bringing the government & people together is a means of establishing harmony between the high and the low.

The third article says: "Let every "one from the Officials to the common "people, be free to pursue his object "without molestation". The establishment of a constitutional government is a means of securing to all, officials and common people alike, the liberty of following their chosen objects without molestation, while a despotic form of government hinders the people from

attaining their desires, and worries them excessively. The establishment of a National Assembly moreover would stimulate the people to activity in following their chosen pursuits and also provoke emulation & competition.

The fourth article says: "evil "customs of old times must be broken up "and the government founded on "principles universally admitted."

Now to insure the breaking up of the evil customs of old times, and to secure a government founded on principles universally admitted, the establishment of a National Assembly is necessary. Despotism is an evil custom of old times. The establishment of a constitutional Government is now required by popular opinion in our country; and government

in accordance with public opinion is also in accordance with principles universally admitted.

The fifth article says: "Knowledge must "be sought for throughout all the world, and "the foundations of the Empire must be firmly "established." To secure this also the establishment of a National Assembly is indispensible. The acquired knowledge of all the world demands the establishment of a National Assembly now: and not to establish one would be to reject without consideration the knowledge of the world. Also in order to establish the foundations of the Empire, it is necessary to establish a National Assembly, develope the patriotism of the people and thereby foster the nation's strength.

Again; in Your Majesty's Proclamation are the words: I trust to have the felicity

"with you of establishing a Constitutional
"Government." As we desire to respond
to Your Majesty's wish to make us, Your
subjects, participate in the felicity of
establishing a constitutional Government,
we can only do so by desiring a National
Assembly, and this is our first reason for
petitioning for such assembly.

(Duties and rights are inseparable.
"The payment of taxes and the performance
of military service are duties of the people,
which they owe their country. Having these
duties to perform they have also the right of
participating in the government. There is
nothing so dear to men as their lives & property.
If men have not the right to deliberate
concerning the advantages of peace or war
and have no voice in determining
the amount of tax, though required both

to pay tax and perform military service, their lives and property both are in the hands of their rulers. Is any such thing reasonable? Since the middle ages the people of your country have been divided into four classes, of which four the armed class only performed military duty and took part in government. The remaining three classes, (farmers, mechanics and merchants) while a part of the people of the land, were treated as if they were aliens. Therefore Your Majesty wisely decided to turn the "Han" (Territory of princes or nobles) into "Ken" (Provinces under the General Government), to disband the armed-class, to publish the Recruiting Regulations, and require military service of all the four classes. The armed class alone did not constitute the people; the other three

classes were also of the people as well; hence Your Majesty obliged them also to perform military service and gave them likewise the right to participate in the government.

Again; until recent times, the farmers were like slaves, without title to the ground they cultivated, which was all held by the government, while they, the cultivators, were obliged to pay the tax which was collected from the farmers only. This was a great perversion of right. Hence lately the Tax Law has been revised, and all the four classes of the people are now required to pay their proportion. Also the Land-tax Law has been altered, and now title-deeds are issued. All this has been done because "the nation is the nation's nation" and not the property of the Government. The issue of title-deeds has already made it clear

that the lands of the nation are not the property of the Government. As the lands are not the property of the government neither are the productions raised by the people. The taxes levied by the government are levied for the public benefit hence the taxes paid in are to be regarded as the property in common of the people. Now though private or personal property may rightfully be managed by the owner alone, it is only reasonable that property held in common should be disposed of by common consent. Hence in disposing of such property the Government has no right to act arbitrarily. It must consult the wishes of the people of the whole country. If it consults the people respecting taxes it must also establish a National Assembly and grant the right of participation in

the government to the people of the whole land. This is our second reason for petitioning, as we do, for a National Assembly.

III A country being composed of the people the government thereof should be administered in harmony with the bent of public opinion. Even though the officers in power should regard their own administration and laws as good and just, yet when they are opposed to the popular will, rebellion and disorder will be the result. Though Your Majesty has labored assiduously since your accession yet for more than ten years since the revolution the country has not had a day of tranquility, so constant have been military disturbances. Moreover those who have caused these disturbances, and incurred the reproach of being rebels, have all been officers of fidelity and merit who died

service during the revolution. Is it because of any change of principles that the faithful officer of yesterday is the rebel of today? There is something inexplicable about this. Government is of course obliged to suppress rebellions but in doing so the spirit of the people is not a little injured, life and treasure are wasted? ✓ waisted and society corrupted. The reason why rebellions have been so incessant in our country is the fact that there is no recognized way of communication between the high and the low, the expression of public opinion being suppressed. Now the establishment of a National Assembly is the best possible way of securing the desired communication between the high and the low and of giving effect to public opinion. This is our third reason for desiring such an assembly.

IV. The management of the finances is a matter of the highest importance to the nation's welfare, and withal most difficult. At present many things call for attention in both our foreign and domestic administration, and at the same time our national debt increases while coin continues to be exported. Arrangements have been made for paying the foreign debt but it has not yet been actually paid; on the contrary it continually increases. The reason why foreigners who have not the least friendship for us lend us money is because they thereby get a claim on our land. Should they at any time press their claim, and we not be able to meet it, our land would be required by them. In such a case the land in which we reside would be no longer ours, and our country would be disgraced by reason of the

mismanagement of its finances, and ultimately ruined. An example is near at hand, in Poland. She increased her paper currency; prices rose in consequence of national disorders inevitably; various causes conspired; but the main cause of that nations overthrow was misman=agement of the nations finances. If we do not now rectify this evil it may become such as to defy remedy. What your Majesty may have to interpose we know not, for our part we cannot surren=der to the rulers the whole management of this important matter of the finances, and remain quiet at such a time.

To obviate the impending evil it will be necessary to establish a National Assembly and commit the manage=ment of the finances to it. This

is our fourth reason for petitioning for such an assembly.

V. The liberty or independence of any country results from the spirit of liberty and independence in the people. Hence if a country wishes to preserve its own independence it must secure the personal liberty of the people. A country like ours has the name of being independent but is not so in fact. The treaties with foreign countries are beneficial to them but injurious to us. Foreigners have extra-territorial rights and, as we hear with indignation, frequently wrong our people and defy our laws. Public opinion throughout the whole nation demands the revision of these treaties, and the reason why they have not

been revised already is the fact that foreign nations are stronger than ours and also the further fact that hitherto the cooperation of the people has not been sought. Should our rulers and people unite to demand the revision of these treaties this demand could not well be denied; but in case consent should be withheld even then, we would arise and revise them ourselves. If this matter of revision is not soon settled, if more time is spent in vain, we must incur more and more disgrace till the matter becomes intolerable. If we desire, in these times of progress to maintain our independence as a nation, to colonize and improve our distant provinces and extend our influence on all sides, a National Assembly must

be speedily established, and the power of the people of the whole land must be utilized. This is our fifth reason for asking for such an Assembly.

We have other reasons for making this request too numerous to mention. Too? Your Majesty has already inaugurated the establishment of such an assembly as we, your subjects, petition for. Can there be any reason for longer delaying what we both desire. Some officials quibble about the word "gradually" used by Your Majesty in Your Proclamation, and say very unreasonably that the establishment of a National Assembly should be post-poned till the people are educated. On this plea of progressing "gradually" is the establishment of this

assembly to be delayed for fifty or a hundred years. If time is thus spent in vain it will never be established. What should we say of a man who wished to go a hundred miles and yet never took a step, on the plea of going "gradually". The reason is the same in the matter of establishing a National Assembly and Constitutional Government. Now is a time of rapid progress. The people are united in heart, and popular intelligence prevails. Matters are not as they were a score of years ago. Then we were ignorant of the principles of government, and satisfied with the evils of despotism and committed all government to the rulers; but this sleep has been suddenly disturbed by finding to our great shame that our rights as men and citizens

had hitherto been denied us. Hence with regret and shame for the past we request Your Majesty to consider our condition and forgive us for having, in our ignorance abstained from participation in the government, rolling as we did the whole burthen on others. We petition your Majesty now to establish a National Assembly, give us the right of participation in the government and thereby diminish Your Majesty's great labors. Nothing will be more advantageous both to the Government and people. As the prosperity and integrity of the nation depends on the establishment of a National Assembly we desire to aid your Majesty in this work and with you, enjoy the great benefit accruing therefrom. This is a matter

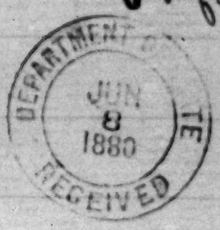
for which we are constantly so-
licitous. We therefore petition Your
Majesty to grant our request in this
matter. In case this request is
granted we would be happy, by a
fit representative, to consult with
Your Majesty and decide as to
the means of establishing the As-
sembly and the regulations to be
observed. Or should Your Majesty
wish to hear our views we will
be happy to make them known
in writing or by word of mouth.

Hackett
Jan 15. 1880.
Mr Caldwell

See letter from Hackett Aug 19.
State Jenison
Bingham

Ltr from Aug 27. 80
Gov Hayford

No 1116. Mr. Hackett
C. P. Made



United States Legation,
Japan,
Tokei, May 8, 1880.

Mr Bingham
to the
Hon Secretary of State.

Subject.

Alluding to the enclosure with Instruction No 488, a letter from H. Foggo relative to the "Valetta" and "Peiho" claims and their payment from the Simonoseki Indemnity fund, Mr Bingham encloses a copy of the letter of the Washington correspondent of the Tokei Times on the subject of the indemnity fund. He also states that Mr Batchelder has informed him that he (Mr Batchelder) has endeavored to settle the "Peiho" claim by offering to the late Finance Minister, Mr Okuma, to receive $5,000 silver yen and a certain percentage from the indemnity if repaid to Japan. Mr Bingham informed Mr Batchelder that he (Mr Bingham)

had no authority to negotiate with the Japanese Government in regard to the Simonoseki indemnity. Subsequently Mr Bingham unofficially suggested to Mr Inouye a compromise of the "Valetta", "Peiho" and "Wilmington" claims, a portion of the payments in the two former being based conditionally upon the return of the indemnity upon the terms proposed in the Senate bill whereby a certain portion is reserved for payment of claims.

Enclosure.

Extract from the Tokio Times, May 8th, 1880.

No 1116.

United States Legation,
Japan.
Tokei. May 8th, 1880.

How William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

Referring to the note of Mr Adee, Chief of the Diplomatic Bureau, of date the 26th of March last, enclosing a copy of the letter of Messrs H. Fogg & Co, with its enclosures, which were inadvertently omitted from Instruction No 488 in relation to the "Valetta" claim, I beg leave to call your attention to the statement therein that "J. M. Batchelder, the "'Peiho' claimant had suggested that it "might be possible to make a compromise "settlement of both claims" (Valetta and Peiho) "for the purpose of removing impediments "to the return of the Japanese indemnity "fund" (meaning the Simonoseki indemnity, and that these claims were com-

prehended

"pretended in the 2d section of Senate
"bill 42, 1st session of the 46th Con-
"gress, providing for ascertaining and
"paying of claims of American citizens
"against the Japanese Government".

I notice an article published in the Tokio Times of this morning dated Washington March 19 1880, signed "H.R.E.", a copy of which is herewith, in which the writer, speaking of the "long delayed "Japanese indemnity fund", says that "the committees on foreign relations "in both houses have unanimously "agreed in favor of the measure, and "it has the cordial approval and "support of the State Department". The bills in the two houses, however, as the writer says, differ in this, the Senate bill restores the full amount less two hundred and fifty thousand dollars ($250,000.00) retained from the total accumulations for certain naval claims; the House bill provides for the payment of the original indemnity Seven hundred and fifty thousand dollars with five

per

five per cent interest, "the latter leaving a
"surplus of about Four hundred and fifty
"thousand dollars ($450,000 oo) out of which
"the Government undertakes to pay all
"counter claims".

I sincerely hope, for the
honor of your Government and in the
interest of justice as well, one & other
of these bills may be passed by Congress
and approved by the President.

It seems to me proper
in this connection to acquaint you that
since the receipt of your telegram in
relation to the compromise of the
"Peiho" claim Mr Batchelder sought
to compromise the claim through His
Excellency Mr Okuma, late His Imperial
Japanese Majesty's Minister of Finance,
and proposed to receive Twenty five
thousand silver yen and an agreement
for a certain per cent of any money
which the United States might pay to
Japan on account of the Simonoseki
Indemnity. When Mr Batchelder informed
me of his action in the premises, I said to

him

him that I had no authority to negotiate with this Government in relation to the Simonoseki Indemnity and would not do so, but added that if he could bring about a settlement of his claim in the manner proposed, I could not object to it, as I was instructed to accept what he should approve. I have been spoken to on the subject by His Excellency Mr Okuma, who, after referring to what had been proposed by Mr Batchelder, said to me that he was not at liberty to offer more than Twenty five thousand silver yen in satisfaction of the "Peiho" claim, and that his Government would gratefully accept whatever the United States might offer on account of the Simonoseki indemnity. I have since that, viz: on the 4th instant informally and unofficially conversed with His Excellency Mr Inouye in relation to the settlement of the "Peiho" claim and also of the "Valetta" claim, and also the claim of Captain Browne, and have suggested to him whether it would not be

desirable

desirable to settle the same by a com-
promise as follows:- Twenty five thousand
silver yen to Mr Batchelder and an
agreement to pay Fifty thousand dollars
also to him out of any money which
the United States might appropriate
on account of the Simonoseki indem-
nity; to settle the "Valetta" claim by
paying Five thousand yen to the
claimants Messers H. Foggoles and
agreeing to pay them Thirteen thousand
dollars out of any money which ought
to be paid to Japan by the United States
on account of the Simonoseki indem-
nity, and to settle Captain Browne's
claim by paying Twenty thousand
dollars, the amount named in
your Instruction. I made these
suggestions as to the two former
claims upon the written authority
of Mr Batchelder and Mr Fobes, the
agent of H. Foggoles and after the
receipt of the enclosures of In-
struction No 488.

If the House bill should pass, "restoring"

as

as the enclosed article says, "Four
"hundred and fifty thousand dollars
"out of which the Government under-
"takes to pay all counter claims, it
seems to me that I should accept
any proposition of this Government
for the settlement of either & all of
these claims, subject to an express
stipulation that the amount agreed
to be paid by this Government shall
not be paid, if by the Act of Congress
the amount specified and offered
by this Government shall be provided
for in the refund of the Simonoseki
Indemnity and thereby the same shall
be reserved by our Government for
satisfaction of said 'counter claims".

Referring to the expressions of
the President in his annual message
of the 1st of December last in relation
to the Indemnity funds received from
China and Japan, I note that he says
"if any part of these funds is justly-
"due to American citizens they should
"receive it promptly and whatever may

have

"have been received in excess of strictly
"just demands should in some form
"be returned to the nations to whom
"it equitably belongs". This language
seems to import that the claims
against Japan above mentioned, so far
as our Government deems them
just, should be received and paid out
of the Simonoseki indemnity, and the
residue thereof, after satisfying these
and other just claims of our citizens
against Japan, should be returned
to this Government. It is certainly
very desirable that some satisfactory
settlement of these claims should
be had.

I have the honor to be,
Sir,
Your obedient servant,
Jno A Bingham

THE SIMONOSEKI INDEMNITY FUND.

To the Editor of the Tokio Times:

Sir: The prospect of getting favorable action from congress on the long-delayed Japanese indemnity fund seems brighter than for some time past. The committees on foreign relations in both houses have agreed unanimously in favor of the measure, and it has the cordial approval and support of the state department. The specific bills, as they come before the respective legislative houses, differ in some immaterial details. The senate bill restores the full amount as it now stands, except that certain naval claims, amounting to about $250,000, are subtracted from the total accumulations. The house bill provides for the repayment of the original amount of the indemnity; $750,000 with five per centum interest. This leaves a surplus of about $450,000, out of which the government undertakes to pay all counter claims. Either bill is equitable and would satisfy the moral claim of Japan to the money. It is almost unnecessary to add that no proviso is included in the bill making the payment conditional on the application of the fund by Japan to educational or other specified purposes. So far as I can learn, the chief opposition to the passages of the bill will come from Mr. Sherman and Mr. Edmunds. Secretary Sherman, as the head of the treasury department, is naturally disposed to keep the large sum of money involved under his control. The fund, to be sure, has never been covered into the treasury or reckoned among the assets of the government; but Mr. Sherman probably thinks a contingency might arise which would enable him to add it to the resources of the nation. Most probably, however, he opposes the payment from force of habit, it being his disposition and his office to be jealous of public expenditures, and to make as favorable a showing on the nation's balance sheet as possible. Mr. Edmunds, who is one of the purest and ablest men in public life, has long opposed the bill on the ground that the whole matter was decided at the time and that it would be repugnant to public policy to reopen a question of this sort. Mr. Edmunds is well known in America as the sworn foe of all needless expenditures, and of all that class of particular and exceptional law-making which comes under the head of what is called "special legislation." He has an antipathy for claims of all kinds, and does his best to make the road of the claimant to the treasury vaults a hard one to travel. Under the cumbrous forms which rule the federal legislature, it is far easier to obstruct than expedite the public business; and Mr. Edmunds is a master of all the arts of parliamentary strategy. Whether he intends to lead a determined and aggressive opposition to the bill or is disposed to content himself with merely registering a protest, remains to be seen. The chief obstacle after all is not any one man's enmity but the indifference which congress feels on all subjects not distinctively political. Both parties are now hard at work, by word and vote, trying to convince the country that each is more deserving of our support than the other,—the plain truth being that neither merits such partiality but rather that both should justly lie under a heavy weight of popular contempt. Very little legislation of an abstract or an unpartisan character will get any attention from congress during the present session.

H. R. E.

Washington, March 19th, 1880.

Dispatch



United States Legation,
Tokei, Japan, May 10. 1880.

The Honorable
William M. Evarts,
Secretary of State, Washington.
Sir:

I have the honor to enclose herewith duplicate of my account for salary for the quarter ending March 31. 1880.

I have the honor to be, Sir,
Your obedient servant,
David Thompson.

Ack

McCon

No 1117.



United States Legation,

Japan,

Tokei, May 10, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

Mr Inouye informs Mr Bingham that Mr Ho, the Chinese Minister, has communicated to Viceroy Li-Hung-Chang a proposition said to have been made by Mr Bingham for the settlement of the Lew Chew question by the division of the islands between the Chinese and Japanese Governments. Mr Bingham informs Mr Inouye that he has made no such proposition, and in an interview with Mr Ho the latter disclaims having made the alleged statement

to the Viceroy.

Enclosures.

1. Mr Inouye to Mr Bingham, April 19, 1880
2. Mr Bingham to Mr Inouye " 20 "
3. Memorandum of interview between Mr Bingham and Mr Ito, May 1, 1880.

No 1117.

United States Legation,
Japan,
Tokio, May 10, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

On the 19th of April last I received from His Excellency Mr Inouye, His Imperial Japanese Majesty's Minister for Foreign Affairs, a note (a copy of which and of its enclosure is herewith) 1/1117
wherein His Excellency stated in writing what he had verbally communicated to me on the 12th of that month, that he had sent a messenger to China to ascertain privately the opinion of that

Government

Government touching the Lew Chew question, and that he had received a papers to the effect that the said Chinese Minister at this Court, Mr Ho-jen-Chang, had represented that certain proposals had been made by me for the settlement of the Lew Chew question after full consultation with General Grant. In reply to this note I stated what I had said when His Excellency verbally communicated with me on the 12th of April, to the effect that I had made no proposals whatever to His Excellency Mr Ho for the settlement of the Lew Chew question, a copy of which reply, dated the 20th of April last, I have the honor to enclose.

2/1107

After the receipt of my note Mr Inouye verbally requested that I should address a note to Mr Ho, to the effect that I had

had made no proposition to him for the settlement of the Lew Chew question. This I declined to do, but took occasion on the 1st instant to call on Mr Ho and to acquaint him of Mr Imonyi's statement, that he (Mr Ho) had represented, or was reported to have represented, that I had made a proposal of settlement between the two Governments in the matter of Lew Chew. Mr Ho declared he had made no such representation to his Government, and that I had made no proposition whatever touching the settlement of the Lew Chew question, and assured me that he would call on Mr Imonye and assure him that I had made no proposition for the settlement of the Lew Chew question between the two Governments.

China

China and Japan. Dr D. B. McCartee,
the Foreign Secretary of the Chinese
Legation, being present and acting
as Interpreter for Mr Mo and myself
on this occasion, has kindly furnished
me a written statement of this conversation,
3/1111 a copy of which is herewith.
His Excellency Mr Inouye has said
to me since this conversation that
he is fully satisfied with my statement.
I attach little importance
to this matter, beyond the fact that
I infer from all that transpired in
my conversations with Mr Inouye and
Mr Mo, that the former really intended,
if possible, to obtain an amicable
settlement with China of the Lew Chew
question by a division of the Lew
Chew Islands between the two
Governments

Governments.

I have the honor to be,

Sir,

Your obedient servant,

Wm. A. Bingham

No 1117.

Enclosure 1.

Copy.

Tokio, April 19, 1880.

Dear Mr. Bingham,

Recently I sent a man to China to inquire privately the opinion of the Chinese Government in the pending question of Kuriles, and I received the paper translation of its extract I beg to enclose, from which it seems to me that the principle of the Chinese Government is based on information received by Li Hungchang from Hoju chang the Chinese Minister here, in which Mr. Hoju chang states what you have proposed to him after full consultation with General Grant. I am anxious to ascertain from you whether you have consulted with Mr. Hoju chang on the subject.

Yours very truly

Inouye Kaoru.

P. S. I wish to obtain an answer to this note as soon as you find convenient. I will send for it to-morrow morning.

No 111[7].

Sub-Enclosure.

Copy.
& Translation.

A letter addressed by Mr. Ho-Ju-Chang to Li Hon-Chang dated 24th of the 6th month last year of the Chinese calendar (corresponding to 30th July 1879) was shown to me, extract of which is as follows: x x x When I (Ho-ju-chang) called upon the American Minister on the 20th he said, that the Riu Kiu question should be settled and both countries should preserve their respective honors and that he (American Minister) had a full consultation with General Grant for arranging the matter, the result of which is as follows:
Riu Kiu is naturally divided into three parts. The middle part would be returned to the King of Riu Kiu to restore the Kingdom and its sovereignty; China and Japan may appoint their respective

consuls to protect her in common;
The southern part is situated near
to Formosa and very important to
China, it will therefore be subjected
to China. The northern part is
situated near to Satsuma and
very important to Japan, it will
therefore be subjected to Japan.

No 1117.

Enclosure 2.

Copy.

United States Legation,
Tokei, April 20, 1880.

My dear Mr Inouye:

Your note dated yesterday only reached me this morning. In this note you acquaint me of the matter which you verbally communicated to me on the 12th instant when you did me the honor to call upon me, viz: that you had sent a messenger to China to ascertain privately the opinion of that Government touching the Lewchew question and had received a paper to the effect that the Chinese Minister in Japan Mr Ho-ju-Chang had represented certain proposals for the settlement of the Lewchew question as having been made by me after full consultation with General Grant. In our conversation of the 12th instant above mentioned you will doubtless remember that I told

you that I had made no such proposition for the settlement of the Lewchew question as stated at that time by you to me, viz: that by mutual agreement between Japan and China the latter should take possession and control of the Lewchew Islands (the name of which you told me but which I have forgotten) lying next to China, and the former should take possession of the northern group lying next to Japan. I understood you to say that you wished this statement to be confidential and that if I should communicate it to my Government, it should be in strict confidence. I have not yet communicated your statement to my Government. After replying to you as above stated, that I had made no such proposition and had not had full consultation or any consultation with General Grant upon such proposition, I also stated to you what I now beg leave to repeat, that while I did not recollect any conversation with Mr Ho upon such a proposition, it might be possible that he made mention of such a mode of settlement, and that if so I had no doubt I expressed my desire that such settlement as would be

peaceful and mutually satisfactory to Japan and China in regard to Lew Chew and also just to the people of those islands might be arrived at. In answer to your remark in your letter of the 19th instant that you are anxious to ascertain whether I have consulted with Mr Ko-ju-Chang on the subject, I have to say that I have conversed with him at times as I have with yourself on the general subject of the Lew Chew controversy between China and Japan, and have always counselled forbearance and an amicable settlement, and this only personally and unofficially and in the spirit of kindness to both governments. In further answer to your remark above mentioned, I can only repeat what I have already said, that I did not on the 20th of July 1879, or at any time, make a personal or official proposition to Mr Ko-ju-Chang for the settlement of the Lew Chew question on the terms mentioned in the translation which you enclose with your note of the 19th instant or on any other terms.

As I said to Y.E. in my conversation with you on the 12th instant, I hope your government may

agree with that of China upon a settlement on the terms you then stated, viz: that China shall take possession of the southern group of Lew Chew Islands lying next to China and that Japan shall take possession of the northern group of Lew Chew islands next to Japan.

In conclusion allow me to say that I have made no official representations on the subject of the Lew Chew controversy either to China or to Japan, but have, when the matter has been brought unofficially to my notice used my personal friendly offices for the maintenance of peace between the two countries and for an amicable settlement of the Lew Chew question.

Hoping that this reply to your note of yesterday may be satisfactory,

I remain very respy and truly Yours

(Sgd.) Jno. A. Bingham

H. E. Tsungyi Kaoxun,

&c &c &c

No 1117.

Enclosure 3.

Copy.

Tokio, Japan, 1st May 1880.

Between 10 and 11 o'clock in the forenoon His Excellency John A. Bingham, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, called to request me to go with him and interpret between His Excellency and Their Excellencies the Chinese Envoys, Ho and Chang, upon some business which he wished to discuss with them. Upon reaching the Chinese Legation it was found that the Chinese Vice Minister Chang was absent in Yokohama, but the Minister Mr Ho came out to receive the United States Minister. After the usual complimentary enquiries &c. Mr Bingham said to Mr Ho that he had heard from a certain party that H.E. the Viceroy Li-Hung-Chang had informed the Special Envoy & Commissioner sent by the Japanese Government that the Chinese Government were unwilling to treat with the Japanese Gov-

ernment in relation to the settlement of the controversy between the two Governments in the matter of Liu Chiu Except upon the basis of the conditions which had been proposed by the United States Minister. Mr Bingham said that he had simply urged upon the officers of both Governments the great importance of preserving unbroken peace, lest they should afford occasion to other Powers to injure the interests of China and Japan, and had again and again impressed upon H.E. Mr Ho the importance of the maxim that "there is luck in leisure", but that he had never suggested a division of the territory of Liu Chiu between China and Japan, nor, in fact, had he suggested any plan of settlement whatever, and that he wished that Mr Ho would write him a note to the effect that he, Mr Bingham, had never suggested or made any such proposition. Mr Ho replied that he had not received from the Chinese Government any information & instructions relative to what had passed between the Government and the Japanese Envoy or Commissioner, and therefore he did not

feel it to be in his power to address any note to the United States Minister on the subject, and enquired from whom Mr Bingham had heard the statement referred to. Mr Bingham replied that he heard it from the Japanese Minister of Foreign Affairs. Mr Ho said that although, for the reasons already stated, he could not write a note to the United States Minister upon the subject, he would call upon the Japanese Minister of Foreign Affairs and inform him that the statement that the United States Minister had suggested to the Chinese Government any plan or basis of settlement of the question between the Government of China and Japan relating to Lew Chew was incorrect, and that Mr Bingham had made no such proposition or suggestion. Mr Ho said that the Chinese Government did not wish to acquire any part or portion of the territory of Lew Chew, but wished that the autonomy of Lew Chew should be restored and preserved. Mr Ho referred to the case of Servia and suggested that a similar

arrangement to what he had heard had been made with reference to Corea might be made with reference to Loo Choo. After some further conversation and with the understanding that the Chinese Minister would call upon the Japanese Minister of Foreign Affairs, and assure him that the U.S. Minister had made no such proposition to the Chinese Govt. as that attributed to him H.E. Mr Bingham took leave of the Chinese Minister, and, at H.E. Mr Bingham's request, I have drawn up the foregoing resumé of the conversation referred to, at which I acted as interpreter between their Excellencies, and I certify that the said resumé is substantially correct.

(Sgd.) D. B. McCartee
Foreign Secretary
of H.I.C.M. Legation,
Tokio, Japan.

3 copies to Navy for Hydrographic Office
2 copies to Treasury
File one with this
June 18. to Mr Cadwalla

Navy for Hydrog.c Office

C. P.

made

No 1118.



United States Legation,

Japan,

Tokei, May 16, 1880.

Mrs Bingham

to the

Hon Secretary of State.

Subject.

Transmitting Notice to Mariners No 3 as to new beacon on Fukuse rock.

Enclosures

Six copies of the Notice to Mariners.

No 1118.

United States Legation,
Japan,
Tokei, May 16, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

Herewith I enclose for your information six copies of Notice No 3 to Mariners issued by this Government on the 10th instant, in which it is stated that a new beacon has been erected on Fukuse rock, and referring mariners for the position of the rock and beacon to Notice No 1 10th year of Meiji (1877).

I have the honor to be,

Sir,

Sir,

Your obedient servant,

Wm. A Bingham

No 1119.

DEPARTMENT OF STATE
JUN
14
1880
RECEIVED

United States Legation,

Japan,

Tokei, May 20, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

The Minister for Foreign Affairs transmits to Mr Bingham a counter-statement by Nagai Jinske in his claim for loss of his vessel by collision with the "Ashuelot." This statement contradicts the "statement of facts" furnished by the Navy Dept. and forwarded in Instruction 284.

Enclosure

Mr Inouye to Mr Bingham, May 11, 1880, with

Counter-Statement of Nagai Juiske..

No 1119.

United States Legation,
Japan.
Tokei, May 20, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

Referring to my No 493 in relation to the claim of Nagai Jinske, a Japanese subject, and to your Instruction thereon to me No 284, enclosing the decision of the Honorable the Secretary of the Navy in the premises, I beg leave to acquaint you that I am in receipt of a communication on the subject from His Excellency Mr Inouye, the Minister for Foreign Affairs, enclosing a counter statement of the Claimant

claimant, a translation of which state-
ment, together with a copy of the letter
of the Minister for Foreign Affairs, I
have the honor to enclose.

You will observe that the statement
conflicts with that furnished to the
Navy Department and transmitted with
your Instruction to me.

The claimant prays that a trial be made
where he can confront the witnesses.

As this Government has forwarded the
counterstatement, in which is respectfully
requested a further consideration of the
claim, and asked me to transmit the
same to you and communicate your
reply thereto, it has seemed to me that
I should comply with this request, not
doubting that our Government will be
pleased to reconsider the question

whether

whether Twenty five dollars was all that should have been paid, and whether that sum was in fact received by the claimant as full satisfaction of his claim for damages. You will notice that he denies any knowledge of such payment, and it may be possible that the agents of the "Ashuelot" settled in good faith with a person falsely representing himself to be the owner of the junk.

You will please notice that the enclosed statement of facts, as transmitted with the letter of the Secretary of the Navy in your No 284, is a translation made by Mr Thompson of the Japanese text thereof which communicated the Foreign

Minister

Minister to Nagai Inuske.

I have the honor to be,

Sir,

Your obedient Servant,

Wm A Bringham

No 1119. Enclosure

Copy
Translation.

No. 15.

Foreign Office Tokio,
the 11th the 6th month
the 13th year Meiji.

His Excellency
John A. Bingham,
Envoy Extraordinary and Minister
Plenipotentiary of the U. S. A.
Sir:

Referring to the correspondences which have been repeated between Your Excellency and this Department since the 12th month of the 7th year of Meiji respecting the claim of a Japanese subject, Nagai Jinshi, a peasant of the village of Tarumidzu, Toyoda district in the prefecture of Hiroshima, arising out of a collision between the United States vessel of war "Ashuelot"

and the junk "Fukumiya Maru" owned by the claimant, I have now the honor to acknowledge the receipt of Your Excellency's Communication No. 1089, dated September 30, 1879 enclosing a copy of the statement transmitted to the United States Navy Department by the officers of the "Ashuelot".

I beg leave in reply to acquaint your Excellency that having informed the claimant of the contents of your communication and also forwarded the enclosure, I have received from him the accompanying counter statement. As the Statement made by officers of the "Ashuelot" conflicts with that made by the claimant, I beg that your Excellency will once more have the goodness to transmit the answer of the claimant to Your Excellency's Government and communicate the reply to me.

I avail myself of this

occasion to renew to your Ex-
cellency the assurance of my highest
consideration.

(Signed) Jonkyr Hachiro,
H. I. J. Ms. Minister
for Foreign Affairs.

Enclosure with Mr Inouye's letter of the 11th May 1880.

Repeated Request for the Settlement of the Claim for Damages Sustained by the junk "Fukumiya Maru".

To His Excellency Fuji-i Benzo.
Kenrei (Governor) of Hiroshima.

Sir:

I am very grateful to Your Excellency for the careful attention you have given to my repeated requests for the settlement of the claim for damages sustained by my vessel the "Fukumiya Maru".

In your letter to me of date November 26, 1879 are the following words:
"You are to bear in mind that the
"Foreign Office has directed me to
"say that the statements made in your
"letter were brought to the attention of
"the American Minister by the Foreign
"Office of Japan, and an examination
"was requested in a communication

"sent to him; and that he has replied
"thereto, enclosing a copy of the statement
"of facts made by the officers of the man-of-
"war. From his reply it appears that the
"U.S. Navy Department has decided
"that the case cannot be further consid-
"ered because at the time of the col-
"lision, after a full examination of the
"injury done your vessel, you received
"from the commander of the "Ashuelot"
"the sum of twenty five dollars ($25.00)
"as compensation for the damage
"sustained, and expressed your-
"self as fully satisfied therewith; and
"that consequently full compensation
"has already been made for the damages
"sustained by your vessel in consequence
"of the collision."

Respecting the enclosure referred to above, a copy of which I have received, I have to say that the statement of facts enclosed in the letter of the Secretary of the Navy of the United States to the Secretary of State dated March 22, 1877 and the account or narrative forwarded

to Mr. Fish Secretary of State by Mr. George M. Robeson Secretary of the Navy dated March 15, 1875 differ in important respects. Also there are several statements made in the first mentioned document to which I cannot assent.

I. According to the statement of facts dated March 22, 1877 the collision of the American man-of-war "Ashuelot" with the Japanese junk took place in August 1872. but it took place, in fact, in August 1869 corresponding to the 6th month of the 2d year of Meiji as is stated in the account of the matter dated March 13, 1877.

II. In the report of the Board of examiners consisting of three commissioned officers and the Japanese pilot it is stated that "said commissioned officers and pilot examined the injury done by the eyes of the master of the junk and estimated the damage at twenty five dollars ($25.) which was paid on the spot as compensation to the owner of the junk" I know not what authority there may be for this statement I have not the faintest idea or recollection

of any thing of the kind having been done. Further, as stated in Art. 7, of the account of the matter dated March 15, 1875 the "Ashuelot" being under steam passed on and in a little time passed away. There was therefore no time for the pilot of the man-of-war to talk over the matter with the sailors of the "Fukumiya Maru"; much less to examine the injury sustained in the presence of the master of the junk and to pay twenty five dollars ($25) as compensation. This being certain I consider it evident that this statement of facts is false.

III. It is also stated that Lieutenant F. H. Delano of the United States Navy declared that the master of the junk was satisfied with the money compensation; but as stated above, I have no recollection of having ever received any money compensation; and hence it is certain I had no reason to be satisfied therewith.

IV. The declaration contained in the statement of facts that "any thing the master of the ship or his witnesses

"may say against this simple state-
"ment of facts should be regarded as
"exageration or misstatement,"- I can-
regard as the language of a native of
a civilized country.

The United States is reported to be an
enlightened country and its govern-
ment a just and great government.
I am indeed greatly astonished
that being such a government
it should issue such a statement.
I am of the opinion that in deter-
mining the right or wrong of any
matter it is necessary first to
investigate and ascertain the facts,
and the best method of doing this
is first to hunt carefully for evidence.

But here it is said that "anything
"the master of the ship or his witnesses
"may say should be regarded as
"exageration or misstatement."
On what evidence or ground this
may be believed by others I can-
not believe it because I have several
tens of witnesses who can show

that it is false. Such language I cannot regard as just and right but on the contrary as unjust and wrong, in fact an attempt to carry a point by force and by perverting the truth.

V The assertions that the damage sustained by the Junk was not great,- that it did not therefore sink,- and that its cargo was not lost, need not be met here again, the facts being as stated in Art. 8 of the account of the matter dated March 15 1845:

As above stated none of the assertions contained in the statement of facts can be accepted, hence I desire you to bring the matter again before the United States Government and obtain a fair and just investigation of all the facts of the case.

The account of the matter dated the 12th day of the 8th month of the 8th year of Meiji (Aug 12, 1845) and the American account dated March 15th 1845, the documents in reply

and the written testimony have been forwarded. I therefore earnestly and respectfully request a fair judgement after a thorough consideration of the evidence & examination of the facts.

If the other side objects to the facts as stated, then, as time will only be wasted in making further replies, and as full reply will become difficult or impossible I shall respectfully request that a trial face to face with the other parties be ordered.

Feb. 1 1880.

(Sgd.) Nagai Juskii {L.S.} No. 885 Jarumidzu, Toyoda district in the province of Aki, Prefecture of Hiroshima.

(Sgd.) Yasuda Tohachi {L.S.} Heimbud. No. 877 of Same village.

(Sgd.) Tosei Tei-ichiro {L.S.} Kocho or Recorder

The foregoing being certified to I respectfully forward the same.

(Sgd.) Matsu-ura Tadajiro {L.S.}
District magistrate of Toyoda.

To His Excellency Fujii Senzo. Kenrei (Governor) of Hiroshima.

Enclosure with Nagai Jinkei's counter statement.

Translation

Statement of facts enclosed in a letter of the Secretary of the Navy dated March 22, 1877 and forwarded to the Secretary of State in relation to the collision of the United States man-of-war "Ashuelot" with a Japanese junk Aug. 1872.

From the log of the "Ashuelot" and the reports of the Commander R. R. Wallace, Lieutenant G. F. Wilkins, Master F. G. Drake officer of the deck, and the Board of Survey consisting of three Superior officers, and the Japanese pilot. it is evident that the Japanese junk was but little injured by the collision, - that the "Ashuelot" towed said junk into port, - that the superior officers and pilot of the "Ashuelot" examined the injury sustained in the presence of the master of the junk, - and

that the damage was estimated at twenty five dollars ($25.) which was then and there paid as compensation to the master of said junk.

Lieutenant F. H. Delano of the United States Navy one of the Superior officers of the Board of Survey who was on board the "Ashuelot" at the time states that the master of the junk was satisfied with the money compensation above mentioned.

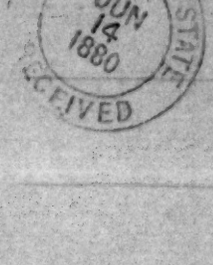
Anything contrary to the foregoing simple statement of facts can only be regarded as exagration or misstatement, whatever the master of the junk or his witnesses may say.

The injury sustained by the junk was not great and it did not therefore sink. Its cargo was not lost. On the day of the collision the master of the junk knew the name and nationality of the "Ashuelot" and the names of its commander & pilot; received money compensation for damages, & was fully satisfied with the amount.

Ack

No 1120.

Wade



United States Legation,
Japan,
Tokei, May 20, 1880.

Mr Bingham
to the
Hon Secretary of State.

Subject.

Enclosing copy of letter from the Chinese Minister to Dr D. B. McCartee, late Foreign Secretary of the Chinese Legation, upon the eve of his departure, thanking Dr McCartee for his valuable and efficient services &c &c.

Enclosure.

Mr H. to Dr McCartee, May 12, 1880.

No 1120.

United States Legation,
Japan,
Tokei, May 20, 1880.

Hon William M. Evarts,
Secretary of State,
Washington, D.C.

Sir:

Dr D. Bethune McCartee, a citizen of the United States of America and of the State of New York, some time in our Consular service in China, for years a Professor in the Imperial College in this City, and more recently, as I have had before this the honor to advise you, the Foreign Secretary to the Chinese Legation in Japan, having resigned his commission in that service

and

and being about to return by the outgoing
Steamer to our Country, has received
from His Excellency Ho-ju Chang, the
Chinese Minister to Japan, a highly
complimentary letter, which it gives me
// pleasure to say is well deserved, and
a translation of which I have the honor to
enclose.

I beg leave further to add that Dr
McCartee is a gentleman of scholarly
attainments, of most excellent character
and has acquitted himself both in China
and Japan most creditably. The
departure of the Doctor and his
family is greatly regretted by those
whose good fortune it was to have their
acquaintance.

I have the honor to be, Sir, Your Obt. Servant,

Rev. W. Burnham

No 1120. Enclosure

Copy.
Translation.

Coöperating and assisting in Translating Affairs.

Dr. Bettune McCartee a citizen of the State of New York in the United States of America, is a man of substantial learning and pure virtue, who, when young, gained a reputation in the University. Having resided in Asia nearly forty years, he is well acquainted with the languages and literature of China and Japan. He formerly discharged the functions of United States Consul at Ningpo and Chefoo and of Vice-Consul General at Shanghai. He also filled the post of professor in the Japanese university department by appointment of the Japanese Government, and gained great praise by his able discharge of his duties in all these different posts. When I was

appointed Imperial Envoy to Japan in the winter of 1877, feeling the need of his assistance, I invited him to join the Legation. From that time until the present, during more than two years, I have consulted him in every important matter, and from his advice I have received very great advantage. During the present summer he has urgently requested me to allow him to return to his native country, and having done my utmost to retain him but without success, I now pen these lines on parting to serve as a lasting memento of my esteem and regard.

Dated H. I. Chinese Majesty's Legation Tokio, Japan. 4th moon of the 6th year of Kwang sii (May 1880)

(Signed) Ho Ju Chang Envoy Extraordinary and Minister Plenipotentiary of His Imperial Majesty the Emperor of China.

Translated by Yang Shou Graduate of the University of Peking, Interpreter to H. I. C. M's Legation, Tokio, Japan.

Mr Noble

Ask

No 1121.



United States Legation,

Japan,

Tokei, May 20, 1880.

Mr Bingham

to the

How Secretary of State.

Subject.

Departure of Gilbt Eli T. Sheppard and his reception by the Emperor.

No 1121.

United States Legation,
Japan,
Tokei, May 20, 1880.

Hon William M. Evarts,
Secretary of State,
Washington, D.C.

Sir:

I beg leave to communicate that Eli T. Sheppard Esq, for three years in the service of the Foreign Office, upon my recommendation, as advised as heretofore communicated to the Department by me, having discharged his duties faithfully and to the satisfaction of this Government had audience of the Emperor and quitted Japan with his family on the

10th

10th instant.

I have the honor to be,

Sir,

Your obedient servant,

Wm. A. Bingham

~~Substance to Press~~

C. 12

No 1122.

Mr. Adee



United States Legation,

Japan,

Tokei, May 20, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

Enclosing report of the trade of the port of Fusan, Corea, for the half year ended December 31, ~~1880~~ 1879

Enclosure

Duplicate copies of the returns.

No 1122.

United States Legation,
Japan,
Tokei, May 20, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D. C.

Sir:

Herewith I heed the honor to inclose for your information duplicate copies of the returns of import and export trade at the port of Fusan, Corea, for the half year ended December 31, 1879.

You will observe that the value of the total exports from Fusan for the half year was gold yen 346,561[20] and of the imports to that port for the

the same period the value was

yen 313,881 62/.

I have the honor to be,

Sir,

Your obedient Servant,

Inc. Kiyhara

Report No. 25. Diplomatic Bureau June 16. 1880. Mr Adee

Advise Mr. Bingham accordingly to report and let matter be submitted to the Secretary at the next Session of the Senate C. P.

Note to Mr Bingham June 18. 80. Mr Caldwell

C. P. Made

No 1123.

DEPARTMENT OF STATE JUN 14 1880 RECEIVED

United States Legation,

Japan.

Tokei. May 21, 1880.

Mr Bingham

to the

How Secretary of State.

Subject.

In accordance with instructions, on the 17th instant Mr Bingham signs, with Mr Inouye, a convention providing the method of payment of expenses of shipwrecks, two copies of which convention are enclosed.

Enclosures.

Copy of the Convention in English.

" " " " Japanese.

No 1123.

United States Legation,
Japan,
Tokei, May 21, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

Refering to Instruction No 480 and the enclosures therewith, I beg leave to acquaint you that on the 17th instant, in accordance with your Instruction and in pursuance of the power vested in me to that end by the President of the United States of America, I entered into and concluded a convention with His Imperial Japanese Majesty's Government, duplicate

of which Convention in the English and Japanese languages, duly Executed by me on behalf of our Government and by His Excellency Mr Inouye, the Minister for Foreign Affairs, duly authorized and empowered thereunto, on behalf of His Imperial Majesty the Emperor of Japan, I have the honor to enclose herewith.

Permit me to say that having received the Instruction and enclosure on the 2d of March last, I on that day addressed a communication to Mr Inouye enclosing a copy of the draft of the proposed Convention and expressing the hope that at an early day we might be able to conclude the proposed -

Convention

convention. Soon thereafter I called the attention of the Minister verbally to the need of prompt action, to the end that the Convention might reach my Government in time for the early attention of the Senate.

I regret that His Excellency's reply to my note was not given until the 13th instant.

Trusting that my action in the premises may meet your approval,

I have the honor to be,

Sir,

Your obedient servant,

Jno. A. Kingman

Commits to imprisonment for life at Albany
Instruction to Mr Bingham of 14 Oct. 10. 1880.
No 1124. Report & Pres. dent July 27. 1880. Mr Cridler
Instruction to Consul at Osaka & Hiogo.
Mr Cridler
Instruction to Consul General Van Buren. Aug 10 80.
File

DEPARTMENT OF STATE
JUN 14 1880
RECEIVED

United States Legation,

Japan,

Tokei, May 22, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

John Martin Rolls, a seaman on the American ship "Bullion", kills Robert Kelly, the second mate of the same vessel, on board the "Bullion" in the harbor of Yokohama. The accused claiming to be a British subject demurs to the jurisdiction of the U.S. Con. Court at Yokohama, but the demurrer is overruled; the Consul General also refuses the request of the British Consul to deliver the accused

to him. Mr Bingham holds that the U.S. Consular Court had jurisdiction to try Ross for the crime charged as the offence was committed by an American seaman on board an American ship in the harbor of Yokohama. Ross is tried as required by law and found guilty of murder in the first degree. Mr Bingham approves the conviction, but suspends execution until the matter can be submitted to the President.

Enclosures.

1. Mr Van Buren to Mr Bingham, May 10, 1880, with four enclosures A, B, C & D.
2. Mr Bingham to Mr Van Buren, May 14/80
3. Mr Van Buren to Mr Bingham " 13. "
4. Mr Bingham to Mr Van Buren " 15. "
5. Full record of the trial &c of J. M. Ross

No 1124.

United States Legation,
Japan,
Tokei, May 22, 1880.

Hon William M. Evarts,
Secretary of State,
Washington, D.C.

Sir:

On the 13th instant I received from Mr Van Buren a despatch dated the 10th instant, enclosing transcript &c. of his proceedings in the case of the United States of America against John Martin Ross, an American seaman, copies of which despatch and its enclosures are herewith.

1/1124

You will observe that the enclosed record shows that Ross was on the

9th

9th instant charged on the written complaint of John P. Reed with having on that day in the harbor of Yokohama and on board the American ship or "Bullion" murdered Robert Kelly, the second Officer of that vessel. On the 12th instant, as the record shows, the prisoner by his counsel filed before the Consul General his affidavit that he is a British subject and demurred on that ground to the jurisdiction of the Consul General to try him, and therefore moved his immediate discharge from custody. The Consul General denied the motion for discharge, recommitted the prisoner and by his note of the 10th instant asked my opinion upon the question of jurisdiction raised by the demurrer.

On

2/1124 On the 14th I made reply to Mr Van Buren, (a copy of which reply is herewith) to the effect that upon a complaint made in due form before the Consul General, averring that Ross at the time of the commission of the crime charged was and still is an American seaman, lawfully engaged as such on board said vessel, and did on the day and year named on board said vessel and in the harbor of Yokohama wilfully, maliciously and deliberately murder Robert Kelly, the second mate thereof, it was my opinion that "the "jurisdiction in such case belongs "exclusively to the United States "by virtue of treaty provision and "Statute law".

Having

Having given my reply to his note of the 10th instant, I received another despatch from the Consul General of date the 13th instant
8/1124 (a copy of which is herewith) in which he informed me that the British Consul at Yokohama had permitted him "to peruse in confidence a correspondence between certain high officials of the British Government upon the subject of jurisdiction over persons serving on merchant ships in Japan and China, directing that when an offence committed by a seaman on a British merchant ship in port was of a serious nature, not merely a breach of discipline &c, and the offender was of another nationality

"nationality than British and there
"existed at the port where the offence
"was committed a tribunal of the
"nationality to which the offender
"belonged, he should be handed
"over to such tribunal for trial".

To this despatch I made
4/1124 reply on the 15th instant (a copy
of which reply I have the honor to
enclose) and, referring to my No
897 of the 14th instant, repeated the
opinion therein expressed, that in
the case against Ross the Consul
General, together with four asso-
ciates, duly selected and qualified,
had authority, under our treaties
with Japan and our laws enacted
to enforce the provisions thereof, to
try Ross upon a charge made in

due

due form for the crime of murder committed on board of our vessel in the harbor of Yokohama. I called the attention of the Consul General to the fact that according to the direction given by the British officers, confidentially communicated to him by the British Consul, it is clear that "if Great Britain had "no tribunal in Japan (assuming that "Ross is a native of the British Pos- "sessions) you (Mr Van Buren) would "have jurisdiction to try Ross for the "crime charged to have been committed "by him on board our vessel in Yoko- "hama harbor notwithstanding his "(alleged British) nativity".

Manifestly if under the existing treaties of Japan with the United States and

our

our laws, our Consular Court at Yokohama would have jurisdiction to try Ross for the crime charged in the absence of a British tribunal at that port, it follows of necessity that our Consular Court has that jurisdiction although Great Britain has a Provincial Court in Yokohama, inasmuch as the Treaty of 1857 between Japan and the United States of America makes no conditions in the grant made therein by Japan to the United States, that "Americans committing offences in "Japan shall be tried by the American "Consul General or Consul and shall "be punished according to American law" (Article 4); and by the Treaty of 1858 (Article 9) it is provided, without any qualification, that "when requested by

that

" the American Consul, the
" Japanese Authorities will cause
" the arrest of all deserters and
" fugitives from justice, receive in
" jail all persons held as prisoners
" by the Consul and give to the
" Consul such assistance as may be
" required to enable him to enforce
" the observance of the laws by the
" Americans who are on the land and
" to maintain order among the shipping"
and as by our statute enacted to
carry these treaties into full effect
(Revised Statutes, Section 4100) the Min-
isters and Consuls of the United States
" are fully authorized to call upon
" the local authorities to sustain and
" support them in the execution of the
" powers confided to them by treaty

and

" and on their part to do and
" perform whatever is necessary to
" carry the provisions of the treaties
" into full effect", and to that end
by section 4086, Revised Statutes
1878, the jurisdiction of our Consuls
in Japan in both criminal and
civil matters "shall in all cases
" be exercised and enforced in
" conformity with the laws of the
" United States which are hereby,
" so far as is necessary to execute
" such treaties respectively, and so
" far as they are suitable to carry
" the same into effect, extended
" over all citizens of the United
" States in those countries (Japan,
" China &c.) and over all others to the
" extent that the terms of the treaties re-

respectively

"respectively justify or require"; and it is further provided in said section that "in all cases where such laws "are not adapted to the object or are "deficient in the provisions necessary "to furnish suitable remedies, the "common law and the law of equity "and admiralty shall be extended "in like manner over such citizens "and others in those countries; and "if neither the common law nor the "statutes of the United States furnish "appropriate and sufficient remedies "the Ministers in those countries (Japan, "China &c.) respectively shall by decrees "and regulations which shall have the "force of law, supply such defects "and deficiences."

Sections 4102, 4103, 4104, 4105 and 4106 Revised

Revised Statutes, in my opinion furnish appropriate and sufficient remedies for the crime of murder committed in Japan & within the territorial waters thereof by either American citizens & American seamen. For twenty years this statute has been enforced in Japan against all citizens of the United States and all American seamen (whatever their nativity) without challenge by any Foreign Power, so far as I know, save in the case of McCondrill, an American Naval seaman serving on the United States Steamer "Lackawanna", who was held to answer by the British Court in Yokohama because of

his

his British nativity, and against which I protested and was sustained therein by the Department.

In regard to this case I beg leave to refer you to my despatch No 204, dated March 20 1875, in which I reported my action thereon and my opinions in relation to the jurisdiction in Japan of our Consuls over crimes committed by American Naval and merchant seamen; and I also beg leave to call your attention to the Department Instruction to me in reply thereto, No 144 of date June 5th 1875, in which the Department was pleased to say that the general ground assumed by me in that case in my correspondence with the British Minister "commends itself to the Department," in

Last

but adding that the English Minister in Washington brought the question to the attention of the Department by direction of Lord Derby. This Instruction to me concluded with the statement that the question was under consideration and "when a "conclusion is reached you (I) will be "advised". Afterwards I received Instruction marked "Separate", of date November 2, 1875, in which it is stated, as to merchant vessels, that, while it is desirable that jurisdiction over such offences (that is offences on shore) committed by American seamen of the merchant service should be exercised by the Consuls of the United States, "it is not deemed advisable "to issue any instructions in relation "thereto", adding, however, that when such offender (i.e. an American

merchant

merchant seaman committing an offence on shore) is a subject or citizen of a country having no treaty engagements with China or Japan, or when the Consul of the Nation to which such person may belong shall decline to assume jurisdiction over him for the offence, the Department is of opinion that the Consular officers of the United States may properly assume jurisdiction in the case. As to offences committed on shore in Japan by persons enlisted as seamen on our men of war, jurisdiction, in the opinion of the Department, belongs to the Consul of the country under whose flag the offenders is serving, on the ground "that all persons who have taken "service under a Power are for the time "being under the jurisdiction of that Power

exclusively

"exclusively and amenable to its tribunals".

It seems to me clear that the question of our jurisdiction to try American merchant seamen for offences committed by them on shore in Japan was left open by this Instruction, while it seems also clear that the question of our Exclusive jurisdiction to try American seamen for crimes committed on board of our merchant vessels when in the open harbors of Japan was not considered by the Department. I beg leave to say that the ruling of the Department that we have jurisdiction over our naval seamen for crimes committed by them on shore in Japan by necessary implication justifies the conclusion that we have jurisdiction

over

over our American merchant seamen for all crimes committed by them either on shore or on board our vessels within the territorial waters of Japan, for the reason that it is not, as I think, the law of nations that gives the United States the right as decided by the Department to try and punish our naval seamen for crimes committed on shore in Japan, but the provisions of the treaties of 1857 and 1858 before cited. But for these provisions it would seem that the Japanese Government would have the exclusive right to punish all persons for crimes committed in Japan on shore.

I regret that the very brief

time

time allowed me before the closing of the mail this evening forbids any further statement of my views upon this important question. I therefore beg leave further to acquaint you that I received last evening from Mr Van Buren a certified transcript of his record in the case of the United States of America against John Martin Ross, which record is herewith, and the same showing no error, in my opinion, in the trial of said case, and it therein appearing that said Ross was on the 20th instant convicted by the Consul General, with the concurrence of his four associates, in manner and form as laid in the charge & complaint, of the murder of Robert Kelly on the 9th of May 1880 on board the American ship "Bullion" and in the harbor of Yokohama,

5/11124

and

and was sentenced to death, which conviction I have deemed it my duty to approve, and accordingly have approved the same and have so notified the Consul General this day, but I have under the statute postponed the Execution of the sentence, as I believe the ends of public justice demand it, and that it is my duty, before proceeding further, to submit the record of the case to the Department for the President's consideration and for commutation of sentence & pardon, if deemed advisable, — in view of the protest of the British Consul against the jurisdiction of the United States in the premises, and of the demand entered on the record by the Counsel of the accused for a jury, and the further

motion

motion made by him to dismiss the complaint because not presented by a grand jury. The protest and demand of the British Consul for the surrender of the prisoner was rejected, and refused by Mr Van Buren, as was also the demand for a jury and the motion to dismiss the complaint for want of indictment by a grand jury. I beg leave to say further that as the provisions of section 4086 authorizes the Minister to prescribe decrees and regulations, which shall have the force of law, to carry out the treaty with Japan for the trial of offences committed by Americans "or others" subject to our laws in Japan, and as such decrees and regulations were made by my predecessor

and

and were followed in this case,
I see no room for the demand to
dismiss the complaint, for want of
an indictment and a trial by jury,
save upon the ground that the Act
of 1860 is unconstitutional. It seems
to me that the Act of 1860 having
remained unquestioned for twenty
years, it may be taken for granted
that it was competent for Congress
to enact it under the grant of
power to pass all laws necessary
and proper to carry into Execution
all treaties made by our Govern-
ment in pursuance of the treaty
power granted by the Constitution.

The accused was tried upon
a complaint made in accordance
with the Consular Court Regulations,
and

and has been convicted by the Consul General of the United States, the four associates duly selected and qualified having concurred with him therein, and the conviction having been approved by me as authorized by section 4102 (Revised Statutes 1878).

Trusting that my action may meet your approval,

I have the honor to be,

Sir,

Your obedient servant,

Jno. A. Kingman

No 1124.

Enclosure 1.

Copy.

No 4608.

U.S. Consulate General,
Kanagawa (Yokohama) Japan,
May 10, 1880.

Hon. John A. Bingham,
U.S. Minister,
Tokio,

Sir:

In the matter of the charge against John Martin Ross, a seaman of the American ship "Bullion", for the murder of Robert Kelly, late second mate of that vessel, which murder is charged to have been committed in the galley of said ship, while lying in this harbor, on the morning of the 9th instant, I beg to state that at 3 o'clock this afternoon I caused the prisoner to be arraigned in Court, and having duly read to him the complaint, called upon him to plead, but instead thereof his counsel filed an affidavit made by

the prisoner, to the effect that he was a British subject, and a demurrer to the jurisdiction of the Court on that ground. On account of the importance of the question, I considered it proper that it be given due consideration, and it seems to me not improper that I should ask your opinion concerning it.

I have accordingly caused a copy of the complaint, demurrer, prisoner's affidavit and of the record of the proceedings of the Court up to this time, to be made, which I herewith transmit to you and respectfully request that you will give me your opinion upon the question thus formally raised.

I beg to add that the ship "Bullion" is under sailing orders for Manilla and her charter calls for being in that port by the end of this month. The Master is therefore naturally anxious for a speedy release, so as to proceed on his voyage, his vessel being now detained solely to furnish the evidence of several of the crew to the circumstances of the killing

of the second inst.

I have the honor to be,
Sir,
Your obedient servant,
(Signed) Thos. B. Van Buren
Consul General

Enclosures.

No 1. Complaint against John Martin Ross charged with murder.
" 2. Record of the cause.
" 3. Demurrer by prisoner.
" 4. Affidavit of prisoner.

No 1124

Sub-Enclosure A.

Copy.

United States Consular General Court,
Kanagawa (Yokohama) Japan.

John P. Rud, Master ship "Bullion" on oath complains that John Martin Ross, supposed to be a citizen of the United States and within the jurisdiction of this Court at Kanagawa, Japan, on the 9th day of May 1880; unlawfully and with force and arms on board the American ship "Bullion" then lying in the harbor of Yokohama Japan, in and upon one Robert Kelly, second officer of said ship, then and there being, feloniously, wilfully and with malice aforethought, did make an assault: and that he, the said John Martin Ross, with a certain sheath knife, which he held in his hand, in and upon the neck of him, the said Robert Kelly, then and there wilfully and of his malice aforethought did strike and thrust with the knife aforesaid, causing a mortal wound from which he, the said Robert Kelly, died a very short time

thereafter on board said ship, in the galley of said ship, where said wound was inflicted.

Sgd. J. P. Reed

Sworn and subscribed to before me this 10th day of May 1880.

Sgd. Thos B. Van Buren
U.S. Consul General

Seal

United States Consular General Court,
Kanagawa, Japan, May 10th, 1880.

I certify that I have reasonable grounds for believing that the contents of the within complaint are true.

(Sgd.) Thos B Van Buren
U. S. Consul General

Seal

A true copy,
(Sgd.) Thos B Van Buren
Consul General

Yokohama.
May 12, 1880.

No 1124.

Sub-Enclosure B.

Copy.

In the United States Consular General Court,
Kanagawa, Japan.

The United States of America
against
John Martin Ross

Charged with the murder of Robert Kelly, late 2d officer of the American ship "Bullion". Defendant in custody before the filing of the complaint, May 12, 1880, 3 o'clock P.M.

The prisoner is brought into Court. T. B. Van Buren Esq, Consul General, on the bench. George W. Hill Esq appears for the prisoner, having been designated for that purpose by the Court at the request of the prisoner. The complaint is read to the prisoner and he is asked to plead thereto. His counsel however intervenes and presents a paper signed by the prisoner and asks that the prisoner may be sworn to the truth of its contents, which is

down. This paper states that the affiant is a subject of Great Britain, a native of Prince Edwards Island in North America, a province and dependancy of the British Empire, and has never renounced the rights or liabilities of a British subject, & been expatriated from his native allegiance & been naturalized in any other country. Upon this affidavit the prisoner demurs to the complaint on the ground that the Court has no jurisdiction by reason of the fact that the prisoner is a subject of Great Britain.

The demurrer and affidavit are filed in Court.

The Counsel for prisoner then moves that the prisoner be forthwith discharged.

Motion denied.

The Court states that the question raised is an important one and not to be decided without careful consideration.

That two questions are involved; first, whether the affidavit of the prisoner is to be considered as establishing his nationality, and 2d, whether, even if shown to be a subject

of Great Britain, the fact of his being duly enrolled on the papers of an American ship and the crime with which he is charged having been committed on the deck of such ship, he is not still amenable to the jurisdiction of this Court. That while the impression of the Court is that none but citizens of the United States can be made to answer in this Court, yet, as intimated, the question is too important to be decided off hand.

It is therefore ordered that the prisoner be recommitted to be again brought before this Court when the Court shall be prepared to give judgment on the prisoner.

Signed. Thos. B. Van Buren
Consul General.

I certify the foregoing to be a true copy of the record in above cause to the present time.

Sgd. Thos B. Van Buren
U.S. Consul General

Yokohama,
May 12, 1880.

No 1124.

Sub-Enclosure &c.

Copy.

Consular General Court of the United States for Kanagawa, Japan.

United States
vs. } Ex. rel. John P. Reed.
John Martin Ross

John Martin Ross, named above, being first duly sworn, on oath says that he is about 28 years of age, and is a subject of Great Britain - that he is a native of Prince Edwards Island in North America, a province & dependency of the British Empire, and that he has never renounced the rights & liabilities of a British subject, & been Expatriated from his native allegiance, & been naturalized in any other & foreign country.

(Sgd.) John Martin Ross.

Subscribed and sworn to before me
this 12th day of May 1880.

(Seal) Sigd. Thos B. Van Buren
U.S. Consul General

No 1124.

Sub-Enclosure D.

Copy.

United States Consular General Court for Kanagawa, Japan.

United States
vs.
John M. Ross
} Ex. rel. John P. Reed.

Now cometh into Court the above named John Martin Ross and having first heard read the charge herein he demurs to the said charge and says that this Court ought not to take cognizance of the offence charged against him, and that this Court has no jurisdiction over him, the said John Martin Ross, to hear & to try the charge herein made against him, because protesting that he is not guilty of the same nevertheless the said John Martin Ross says that he is a subject of Great Britain and this he the said John Martin Ross is willing to verify. Wherefore he prays judgment if

this Court will & ought to take cognizance of this charge, and that he may be dismissed and discharged by this Court.

Sgd. John Martin Rall

Sgd. G. W. Hill
Counsel for accused

A true copy.
Sgd. Thomas B. Van Buren
Consul General

Yokohama,
May 12, 1880.

No 1124

Enclosure 2.

Copy.

No 847.

United States Legation,
Tokei, May 14, 1880.

Thomas B. Van Buren Esq
United States Consul General,
Kanagawa.

Sir:

I have to acknowledge the receipt on yesterday, the 13th instant, of your despatch dated the 10th instant, with enclosures, the transcript &c. of the record in your Court in the case of the United States of America against John Martin Ross, an American seaman, charged with the murder of Robert Kelly, second officer of the American merchant vessel "Bullion," on board of that vessel and in the harbor of Yokohama on the 9th instant.

The transcript sets out the proceedings in the case which were had before you on

the 12th instant. It appears by the record that on the 12th instant the accused was brought before you and arraigned upon the complaint in the case, whereupon he filed an affidavit signed and sworn to by himself, to the effect that he is a subject of Great Britain and "upon this affidavit the prisoner filed a demurrer" denying your jurisdiction and assigning therein for cause of demurrer that he is a subject of Great Britain and by his counsel moved for his immediate discharge. It further appears that you denied the motion and ordered that the prisoner be recommitted, to be again brought before you when you will + be prepared to give judgment upon the prisoner.

Upon this record you ask my opinion on the question of jurisdiction raised upon the prisoner's affidavit and demurrer. As by denying the motion and ordering the recommitment of the prisoner to await further judgment upon him you substantially overruled the demurrer and adjudged that you have jurisdiction to judicially hear and determine the complaint, it seems to me

not proper that I should, pending the further trial of the prisoner, further advise you than to say that, in my opinion, by virtue of our Existing treaty with Japan and of the Statutes of the United States enacted to carry the same into effect, you, together with your associates selected according to law, have jurisdiction to try and determine a criminal charge made in due form before you, averring that on a day and year named the accused was, and still is, an American seaman lawfully shipped as such, and still being such seaman on board the American merchant ship named, and whereon the accused then was in service as such American seaman, he did then and there, to wit: on the day and year aforesaid, on board of said vessel and in the harbor of Yokohama, maliciously, deliberately, feloniously, wilfully and of his malice aforethought kill and murder an officer of said vessel (naming him) This is a suggestion merely as to the substance and not as to the form of complaint.

I do not consider that the foreign nativity of the accused in such case as I have above supposed can affect the question of your jurisdiction, for the reason that by our laws an American seaman lawfully engaged as such, whatever may be his nativity, is for the time being, when on board of your vessel, whether on the high seas or in the harbor of Yokohama, subject exclusively to our laws and to the jurisdiction of our Courts for crimes committed by him on board the vessel when so situated and against the life of any of its officers.

I think it well to suggest to you that the complaint filed in this case is defective in this, that it does not aver that the accused is a citizen of the United States, nor does it aver that he was at the time of the commission of the offence charged and still is an American seaman lawfully shipped and owing service as such seamen on board the American vessel "Bullion".

It does not appear by the record that four associates as required by the Statute

in capital cases, sat with you on the 12th instant.

In my opinion, a demurrer to your jurisdiction under the regulations lies only for cause appearing on the face of the record, not for cause shown only by the affidavit of the accused.

I have further to add, upon the question of your jurisdiction over American seamen of foreign nativity in our merchant service charged with crimes committed on board of our merchant vessels and within the harbor of Yokohama, that, so far as I am advised, no instruction or ruling has been made thereon by our Government, and that the question is not one free from difficulty, but, in my opinion, the jurisdiction in such case belongs exclusively to the United States by virtue of treaty provision and statute law.

I am, Sir,

Your obedient servant,

(Sgd.) Jno. A. Bingham

No 1124.

Enclosure 3.

Copy.

Confidential

U.S. Consulate General,
Kanagawa, May 13, 1880.

My dear Sir:

I have this morning been permitted by the British Consul to peruse in confidence a correspondence between certain high officials of the British Govt. upon the subject of jurisdiction over persons serving on merchant ships in Japan and China.

It appears that Mr Geo. F. Seward, while U.S. Consul General at Shanghai, assumed jurisdiction over an American serving on board a foreign ship for a crime committed while the ship was in that port, and he issued a circular letter to the foreign Consuls giving his reasons therefor. This letter was sent by the British Consul to England and there submitted to the

Board of Trade and the Law Advisers of the Crown. The latter unanimously agreed with Seward's reasoning and conclusion, and directed that when an offence committed by a seamen on a British merchant ship in port was of a serious nature, not merely a breach of discipline & something of that character, and the offender was of another nationality than British, and there existed at the port where the offence was committed a tribunal of the nationality to which the offender belonged, he should be handed over to such tribunal for trial. As I say, this correspondence is marked "Confidential" and was shown to me in confidence by the British Consul and in such confidence I announce the facts to you.

The volume containing the correspondence referred to belongs to the archives of H. B. M. Legation at Tokio.

The Captain of the "Bullion" has been in to see me again this morning. He is in great distress about his ship, saying that his losses will be ruinous on account of this detention,

the end of which cannot be seen.
I am at a loss to know how to
help him. He says that Ross has
always claimed to be from Prince
Edward's Island, and he (the Capt.)
has posted letters for him and addressed
them.

Very sincerely Yours,
(Sgd.) Thos B Van Buren

Hon J. A. Bingham
U. S. Minister.

No 1124

Enclosure 4.

Copy.

No 898.

United States Legation,
Tokei, May 15, 1880.

Thomas B. Van Buren Esq
United States Consul General,
Kanagawa.

Sir:

I am in receipt of your letter of date the 13th instant and marked "confidential", in relation to the case of the United States of America against John Martin Ross, an American seaman charged before you on the 9th instant with the murder on board of the American ship "Bullion" and in the harbor of Yokohama of Robert Kelly, then the second mate of that vessel, in which letter you inform me that on the 13th instant you were permitted by the British Consul to peruse "in confidence" a certain correspondence between high

officers of the British Government upon the subject of jurisdiction over persons serving on board of merchant ships in Japan and China, by which you state it appears that these officials, the Board of Trade and the Law Advisers of the Crown, directed that when an offence committed on a British merchant ship in port was of a serious nature (not merely a breach of discipline), and the offender was of another nationality than British, and there existed at the port where the offence was committed a tribunal of the nationality to which the offender belonged, he should be "handed over "to such tribunal for trial." Of this I have to remark that it seems to me strange that the British Consul, pending the charge of murder before you against Mass, should deem it his duty "in "confidence" to permit you to peruse a British correspondence which you say is marked "Confidential" and was shown to you in confidence, and which you add in such confidence

you announced the facts to me.

I have further to say the question of your jurisdiction in the case of Ross concerns the right of the U.S. Government, under our treaty with Japan and the laws passed to carry the same into effect, to try before our Consuls in Japan all American seamen, whether in our Naval or Merchant service, for all crimes committed by them on board of our vessels, merchant or naval, when in the harbor of Yokohama.

With all respect to the direction given upon this question by the officers of the British Government, which has been communicated to you in confidence, I must say that I adhere to the opinion which I gave you in my No 897 of date the 14th instant on the question of your jurisdiction in the case against Ross, viz: that you have jurisdiction under our treaty and laws to try and determine, together with your associates, in the manner prescribed by our Statutes and Consular Court Regulations, the

case of the accused, John Martin Ross, an American Seaman charged with the murder on board the American ship "Bullion" and in the harbor of Yokohama, of the second mate of that vessel.

It would seem from the direction given by the British officers referred to, that if Great Britain had no tribunal in Japan (assuming that Ross is a native of the British Possessions) you would have jurisdiction to try Ross for the crime charged to have been committed by him on board of our vessel in Yokohama harbor, notwithstanding his nativity; and that you would have jurisdiction (notwithstanding the presence in Yokohama of a British tribunal of justice) to try Ross for a crime committed by him on board of our vessel, on which he owed service and was subject to our laws if his crime were not of a 'serious nature', say assault and battery & the like. This being the qualification of the British officials, I take

no notice of the reported action of Mr Seward as Attorney, inasmuch as it does not appear by your letter that the offence for which he tried the American seaman was "of "a serious nature"; nor does it appear what was the nationality of the vessel on which the American so tried was serving; nor does it appear that the nationality thereof had any treaty rights in China nor any tribunal at the Chinese port in which the offence tried before Mr Seward was committed.

In my opinion, you have power to cause the complaint against Ross to be amended as indicated in my No 897, and to arraign him thereon and bind in his presence, by bail, your associates and swear them to try the case with you as required by law, and to proceed therewith at once, to the end that you may take the testimony of the officers of the "Bullion" and then allow the vessel to depart, as you say it is highly important that the vessel should leave Yokohama at once.

I will thank you to acquaint me

case of the accused, John Martin-Ross, an American Seaman charged with the murder on board the American ship "Bullion" and in the harbor of Yokohama, of the second mate of that vessel.

It would seem from the direction given by the British officers referred to, that if Great Britain had no tribunal in Japan (assuming that Ross is a native of the British Possessions) you would have jurisdiction to try Ross for the crime charged to have been committed by him on board of your vessel in Yokohama harbor, notwithstanding his nativity; and that you would have jurisdiction (notwithstanding the presence in Yokohama of a British tribunal of justice) to try Ross for a crime committed by him on board of your vessel, on which he owed service and was subject to our laws if his crime were not of a "serious nature", say assault and battery or the like. This being the qualification of the British officials, I take

no notice of the reported action of Mr Seward as Assessor, inasmuch as it does not appear by your letter that the offence for which he tried the American seaman was "of "a serious nature"; nor does it appear what was the nationality of the vessel on which the American so tried was serving; nor does it appear that the nationality thereof had any treaty rights in China nor any tribunal at the Chinese port in which the offence tried before Mr Seward was committed.

In my opinion, you have power to cause the complaint against Ross to be amended as indicated in my No 897, and to arraign him thereon and bind in his presence by bail your associates and swear them to try the case with you as required by law, and to proceed therewith at once, to the end that you may take the testimony of the officers of the "Bullion" and then allow the vessel to depart, as you say it is highly important that the vessel should leave Yokohama at once.

I will thank you to acquaint me

of the receipt by you of my No 897 of the 14th instant when you acknowledge the receipt of this despatch.

In my opinion, the Department circular of which you have a copy, dated November 2 1875, does substantially justify my conclusion as above stated, that you have jurisdiction to try Ross for the crime charged against him. It is my opinion further, if upon due trial and sufficient legal evidence you and your associates should convict Ross of the capital crime charged, in case I should give my approval thereof under the statute, the conviction would be legal.

I am, Sir,

Your obedient servant,

(Sgd.) Jno A Bingham

File & record

In this case
Supreme Court
in error. Complaint
pronounced for life in pen
Albany

To Adee

The President:

I have the honor to bring to
your attention the case of John ch.
Ross. an American seaman on board of
the American ship "Bullion", who has
been recently tried and convicted of mur-
der in the first degree before the Uni-
ted States Consular Court at Kanagawa.
Japan. General Thomas B. Van Buren.
United States Consul, presiding, with
F. E. Foster. E. H. R. Manly. F. H. Olm-
stead and O. Keil. all citizens of the
United States, as assessors. The accused
was arraigned and brought to trial on
the 12th. of May 1880, and on the 20th.
of the same month, the proceedings re-
sulted in a verdict of guilty of murder
in the first degree, in which the Consul

and

and all the assessors concurred, and the Consul thereupon pronounced judgment and sentence as follows:

"The Court accordingly convicts "you of the murder of Robert Kelly on "the morning of the 9th. of May instant, "in the galley of the American ship "Bullion" while at anchor in the harbor "of Yokohama, as laid in the charge, "and you are sentenced to suffer death "in such manner and at such time and "place as the United States Minister "in Japan may direct according to law, "and may God have mercy on your soul."

The record and proceedings were immediately forwarded by the Consul General to the United States Minister at Yokei, and on the 22nd. of May Mr. Bingham approved the proceedings, Verdict and Sentence.

In his dispatch of the same date (No. 1124) Judge Bingham transmits for Executive consideration the record of the trial and proceedings, saying,

"I have deemed it my duty to approve
"and accordingly have approved the
"same and have so notified the Consul
"General this day, but I have under
"the statute postponed the execution of
"the sentence as I believe the ends
"of justice demand it, and that it is
"my duty before proceeding further to
"submit the record of the case to the
"Department for the President's consid-
"eration and for commutation of sentence
"or pardon, if deemed desirable."

The evidence in this case is quite voluminous and from many wit-nesses. It is believed, however, that the following summary, made from

a

a careful reading of the whole, presents the facts substantially and fairly.

Summary of facts.

Kelly was 2nd. officer of the ship; Ross was an able seaman; Charles Brown was cook, and Harriet Brown, his wife, was stewardess. All these parties were ashore at Kanagawa on the night of the 9th. of May last, on a sort of genteel carouse. It appears clearly enough incidentally that between Ross and Mrs. Brown that there was a real liason, and that Kelly wished at least to supplant Ross. They all met on the shore and Kelly instantly attacked Ross. Ross seemed to be the better man in that line, and was getting the better of Kelly when the latter called to Brown to help him.

him. Brown immediately went to Kelly
assistance. They got Ross down
and gave him a most unmerciful
beating. Mrs. Brown by coaxing and
partial force, got her husband away.
The parties separated and in a short
time after (this was between midnight
and morning), the parties all got aboard
the ship. Kelly and the Browns coming
first and together, and Ross soon after.
Ross immediately on coming aboard
changed his clothes, armed himself with
a sheath knife, went to the door of
the pantry where Kelly was eating
a cold supper, challenged him to come
on deck if he felt that he were as
good a man as he said he was to night.
Kelly, as reported said, "Go away my man."
Ross immediately stabbed him in the

neck

neck from which wound Kelly died within half an hour.

July 27. 1880.

No 1125.



United States Legation,

Japan,

Tokei, May 31, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

Receipt of Instructions 496, 497, 498, 499, 500, 501, 502 and 503.

No 1125.

United States Legation,
Japan,
Tokei, May 31, 1880.

Hon William M. Evarts,
Secretary of State,
Washington, D.C.

Sir:

I have the honor to acknowledge the receipt of Instructions numbered 496, 497, 498, 499, 500, 501, 502 and 503, with enclosures.

I have the honor to be,
Sir,
Your obedient servant,
Jno A Bingham

Ack C.P.

made

No 1126.

United States Legation,

Japan,

Tokei, May 31, 1880.

DEPARTMENT OF STATE
JUN 30 1880
RECEIVED

Mr Bingham

to the

How Secretary of State.

Subject.

Commodore Shufeldt's mission to Corea. The authorities at Fusan having refused to transmit his letter to the King of Corea in April, the Commodore comes to Yokohama. He and Mr Bingham have an interview with the Minister for Foreign Affs., who promises to transmit Commodore Shufeldt's letter to the King of Corea under cover of one

from himself, which he does on the 29th instant. Commodore Shufeldt goes to Nagasaki, there to await the reply of the Corean Govt. which is to be transmitted through the Japanese Authorities. Mr Bingham encloses an article from the Japan Daily Herald as an illustration of the vigilance of English Agents as to Commodore Shufeldt's mission.

Enclosures.

1. Mr Bingham to Mr Inouye, May 21/80.
2. Copy of Commodore Shufeldt's letter to the King of Corea.
3. Mr Inouye to Mr Bingham, May 29/80
4. Mr Inouye to the Corean Minister of Ceremony
5. Mr Bingham to Commodore Shufeldt, May 29/80
6. Mr Bingham to Mr Inouye " " "
7. Extract from the Japan Daily Herald, May 29, 1880.

No 1126.

United States Legation,

Japan.

Tokei, May 31, 1880.

Hon William M. Evarts,

Secretary of State,

Washington, D.C.

Sir:

Referring to my despatch No 1112 and also to Instruction No 495, in relation to the mission of Commodore Shufeldt to Corea, I beg leave further to acquaint you that the Commodore having proceeded to Fusan, Corea, early in April last, and not being able to communicate with the Government, because of the refusal of the Govornor of that port

to receive and transmit a respectful letter to His Majesty the King of Corea, came to Yokohama and having conferred with me on the subject, I obtained a personal interview for the Commodore and myself with Mr Inouye, and when the object of his mission had been very clearly Explained by Commodore Shufeldt to the Minister, I availed myself of the opportunity to urge upon Mr Inouye the propriety of sending under cover the letter of Commodore Shufeldt addressed to His Majesty the King of Corea and accompanied with a friendly note from this Government commending the Commodore and his mission on behalf of the United States to

His

His Corean Majesty.

On the next day I addressed Mr Inouye a note on the subject, a
1/1126 copy of which I have the honor to
enclose, together with a copy of
2/1126 the translation of Commodore
Shufeldt's letter to the King,
which I also transmitted to the
Minister.

On the 29th instant Mr Inouye
acquainted me of the purpose
of His Imperial Japanese Maj-
esty's Government to transmit
on that day directly to the
Corean Government, in accordance
with our request, Commodore
Shufeldt's letter to the King of
Corea, and enclosed to me a
translation of his letter of trans-

mittal

3 & 4/1126 missal, a copy of which letter, together with a copy of the Inouye's note, I have the honor to enclose. I immediately addressed

5/1126 and forwarded a note by special messenger to Commodore Shufeldt at Yokohama enclosing the original translation of the Inouye's letter of transmissal to the Minister of Ceremony at the Court of Corea. I am informed by the Commodore that being thus advised of the Inouye's action he will leave for Nagasaki and there wait the answer of the Corean Government, which, you will observe, is to be made to him through the Japanese Government.

I

I have by letter expressed my thanks to Mr Inouye for the action so kindly taken by his
6/1126 Government in the premises, a copy of which letter I have the honor to inclose.

I cannot take leave of this subject without referring again to the endeavor of the English officials and the English press in Japan to intervene in the proposed friendly action of our Government to obtain by peaceful negotiation a commercial Convention with Corea. The article published in the Japan Daily Herald on the evening of the 29th instant and not more than six hours after Commodore Shufeldt was in receipt of my despatch with its

enclosure

enclosure, bears witness to the vigilance which these British Agents employ to possess themselves of Commodore Shufeldt's mission and their eager desire that America may "not permit an absurd jealousy of England, France "and Germany to stand in the way "of a joint operation", officiously declaring that "the Great Powers named "have sufficient ships in these waters "to enforce treaty relations with the "Koreans for the whole of them". I

7/1126 have the honor to transmit herewith a copy of the Herald's article. Our Government humanely and wisely first employs peaceful means to secure commercial privileges and only resorts to force

forced when justice demands and duty enjoins it.

I have the honor to be,

Sir,

Your obedient servant,

Wm A. Brigham

No 1126.

Enclosure 1.

Copy.

No 1221.

United States Legation,
Tokei, May 21, 1880.

His Excellency
Inouye Kaoru,
H.I.J.M's Minister for Foreign Affairs.

Sir:

Referring to the conversation had on yesterday between Y.E., Commodore Shufeldt and myself, in relation to the Commodore's request for a letter from you covering his communication to the Govt. of Corea, I beg leave to again call Y.E's. attention to the fact of which I had the honor to acquaint you in my No 1179, that I am instructed by my Govt. to ask the good offices of H.I.J.M's. Govt. by personal or official letters to the Govt. of Corea to aid Commodore Shufeldt in transmitting a letter on

behalf

of the U.S. to the Govt. of that Kingdom.
Y.E. already knows that Commodore
Shufeldt is possessed of a communi-
cation addressed to him some years
since by order of the King of Corea,
in which the Prime Minister of
His Corean Majesty, among other
things, expressly says that the written
communication which Commodore
Shufeldt had at that time addressed
to the King was improperly delayed
by the local Corean magistrate for
which neglect of duty that official
"received a demerit mark", thereby
showing that it was the wish of H.M.
the King of Corea, as it was H. Ms. duty, to
receive the friendly communication of Commodore
Shufeldt which was wrongfully delayed by the
local magistrate until the Commodore was
constrained by the severity of the weather
and the demands of duty elsewhere to quit
Corea. Commodore Shufeldt now, upon
his return to Corea by order of my Govt.,
simply requests that Y.E. will be pleased
to address a letter to the officials of

Corea at the Capital of that Kingdom and enclose therein Commodore Shufeldt's friendly communication to that Govt, which was read to you on yesterday, to the end that its transmission may not be delayed. By doing this Kind act neither Y.E. nor H. I.J.Ms. Govt. incurs any responsibility whatever present & future, and, allow me to add, will thereby give another assurance of good will toward the U.S. which will be greatly appreciated.

My Govt. confidently expects Y.E. to comply with this request, asking only what it would cheerfully and promptly do for Japan if such a request should be made of the U.S. by Y.Es. Govt.

I pray Y.E. to acquaint me at the earliest day possible of your decision in relation to this request, as the Commodore desires to avoid unnecessary delay.

Again expressing the hope that this favor of a letter from Y.E. covering that of the Commodore which will insure its immediate transmission to the Govt. of Corea will be granted

and not doubting that Y.E. will be pleased to do this act of kindness for my Goot.,

I beg leave to remend to Y.E. the assurance of my highest consideration,

(Sgd.) Jas. A. Bingham

No 1126.

Enclosure 2.

Copy.

U.S. Flagship "Ticonderoga"
Special Service
Fusan, Corea, May 4, 1880.

To His Majesty
the King of Corea.

Your Majesty

I have the honor to inform Your Majesty of my arrival in Corean waters with the U.S. Ship Ticonderoga, Commissioned by the Government of the United States to visit Your Majesty's dominions, with the intent by means of a friendly correspondence to bring about that amicable intercourse between the Government of the United States and Your Majesty's Government, which owing to a misunderstanding has been unfortunately interrupted for several years past.

I

I wish to inform Your Majesty that I am the Officer who, while in command of the U.S.S. Wachusett, lying near the mouth of the Ta-Tong River addressed Your Majesty the following letter:

United States Steamer Wachusett
Off Ta-Tong River District of Chang Yuen Corea
January 24th 1867

To His Majesty the King of Corea:

The Commander of the American armed vessel Wachusett begs to inform Your Majesty that he has come to the Border of Your Kingdom not to engage in war nor any unlawful business. but in obedience to the Command of the Officer Commanding the Armed vessels of America Stationed in these Seas, who has heard with great pleasure and thankfulness of the Kindness of Your Majestys Officers and People to the shipwrecked Crew of an American vessel in the month of June last. on the West Coast of Corea-how Your Majesty had them transported to the

the confines of China from whence they safely reached their friends.

The whole American people cannot but feel thankful and praise your nation for this act of Kindness and brotherly love.

The Officer Commanding the armed vessels of America has since heard with pain and surprise that the people of another American vessel wrecked in the Ping-Yang River in the province of Ping-Yang in the month of September last were all put to death and the vessel burned, and has ordered me to ask of Your Majesty what evil these people had done that they should be made to suffer such cruel treatment.

But if any or all of these people are living the Officer Commanding the armed vessels of America has directed me to ask of Your Majesty that they may be delivered to me on board of the Wachusetts now lying in the harbor of Ta-Tong off the district

of

of Chang-Yuen, or at any more con-
=venient port Your Majesty may select.

This is especially desired that the peace and friendship which has heretofore been uninterrupted for many years may still continue be-
=tween America and Corea.

A speedy answer is requested to this Communication in order that he may depart in peace."

I have the honor to state to Your Majesty that the same kindly sentiments which guided me then actuate me now, while addressing to Your Majesty this Communication.

The following is a copy of Your Majestys reply:-

"To Commander Shufeldt:

The intendant of circuit in the Hoong-Hae district Corea, and ex-officio inspector of the imperial Board of directors, makes the following reply to the comman-
=der

of

of the steamer Vrachusetts, anchored
on our coast off the district of Chang-
-Yuen, namely: That he has examined
your letter of the 18th instant, for-
-warding a communication which you
simply wish to be transmitted to my
Sovereign and proposing to await
the reply of the minister of the fron-
-tier. The local magistrate of the said
place was in duty bound to inform
you that the road going and return-
-ing would be quite long, and to have
treated you with kindness and
sincerity, so detaining your honored
vessel for a reply. How, however, before
the arrival of the reply, the guest from
afar has already departed; so doing
how grievously have we offended the
rules of propriety and violated true
friendly feeling. Aside from the fact
that this local magistrate has receiv-
-ed a demerit mark, I have prepared
a dispatch in reply, to be kept in
readiness in case your honored
vessel should return; and, first I
beg

beg to state in general as regards the circumstances of this affair that the legal regulations of our country with reference to the merchant ships of a foreign country driven here by adverse winds are that, in case the vessel is sound we are to furnish provisions and whatever is needed while waiting for a wind to depart. In case the vessel is not sound and there is no means of proceeding by sea, then we are to follow their wish in sending an officer to escort them by land to Pekin, which thing has occurred heretofore, not merely once. Such a course we look upon as in accordance with true benevolence. He who is in heaven above regards the people of neighboring nations as he does our own. Your worthy communication, which I have just received, is so exceedingly complimentary as to make me feel quite ashamed.

With reference to the affair which transpired last autumn in the Ping-Yang River, I would state that at that

time

time there was a foreign vessel entered the lower waters of the Ping-Yang River, and the local magistrate of that place, supposing that the vessel was driven hither by distress of weather, and coming in to seek a vessel to tranship to, proceeded to make inquiries into the matter, but the men on board the vessel became greatly enraged at the messenger and refused to make any reply shutting their eyes and lying down at their ease, clearly intending to offer insult. Our people restrained their anger, and by most humble address and earnest entreaty, found out that they were not driven here by storm. There was one man on board the vessel named Peny, calling himself a Frenchman, and another said to be an Englishman. They said a large number of men-of-war was about to come to this place, and if the local magistrate would suffer them to open trade with the people it would secure the dispersion

of

of the soldiers of the two armies.

The local magistrate replied that the opening of trade was not a thing that a local magistrate could assume to promise.

The man Peng, however, refused to regard it, becoming more and more unreasonable and violent.

The water in the Ping-Yang River is shallow and unfit for running large vessels; but he disregarded this, and every day, riding on the tide went up a few miles farther. Our people were especially anxious that affairs should not become serious, and so presented them with rice, meats, vegetables, fruit, and fuel.

The man Peng that they would leave the next day; but when the next day came, instead of leaving, they advanced again, evidently intending to push their way to the provincial city. The adjutant-general went out in a vessel every day and escorted them, in order to guard against a collision

collision between their people and ours. One day he threw out grappling-irons and ropes and captured the vessel of the adjutant-general, seizing him, with his official seal, and confining him on board their vessel. In some cases the trading-vessels they met passing to and fro they rent to pieces with their cannon, carrying off the goods and killing their crew. I do not know to the extent how many far and near; all were exceedingly alarmed and fled in continuous streams. How extreme was the disgrace of the adjutant-general thus to be seized before hostilities had begun! Nevertheless we still resorted only to mild words and earnest entreaty, requesting that the adjutant-general should be given up; but the reply was, "Wait till we enter the city and we will restore him." This man Teng could speak Chinese and was without a match in sureness and

and slaughtering and seemed determined to force his way into the provincial city, though we did not know what his intentions were. The whole city including several ten-thousands of soldiers and people, yeilding to thier indignant rage, came out in a mass to the river and commenced an attack with all thier might-intending to rescue the adjutant-general. Several tens of people were killed by the cannon balls, when all, becoming infuriated, rushed on in a mass, the force of which was irresistable. Fire was opened on both sides and fire-rafts were used. Finally the powder stored in said vessel exploded, rending it to peices and sending the black smoke up to the heavens. The vessel was entirely burnt up and the men all killed. We still do not know whether this vessel belonged to your honorable country or not. This man Peny, without cause pushed his way into

the

the interior of another country and provoked this affair, and ex-
=amination had to this time failed to discover his object in acting thus.

It appears from your honorable communication that the vessel of our guest is a different nationality than that claimed by Tsuy. The be-
=ginning and end of this affair amounts simply to this. That your honorable countrys custom greatly tends to produce prosperity in intercourse with others is well known to all the provinces as well as our illustrious neighbor China.

As to what is said in your honored communication about continuing former relations of friendship without any occasion of mutual injury, I will simply say this affair is but a par-
=ticle of Autumn dust, not worthy to be entertained as a matter of doubt and solicitude. I now respectfully present this reply, asking you to

make

make all necessary allowances, and for this purpose this reply is made.

A necessary reply addressed to the American Commander, Fifth year of the Emperor Tung Chi, twelfth month— day."

Unfortunately Your Majesty's reply did not reach me until several years after it was written owing to my absence from the Coast of China as well as the coast of the United States. If I had received it in time I do not hesitate to say to Your Majesty that, in my opinion, the subsequent events which occurred in 1871, in the Kan-Kiang River would probably not have been of such an unfortunate character because I believe that the statement of Your Majesty in the above letter in reference to the lost vessel was essentially true, and knowing as I do the peaceful policy of the Government of the United States with respect to all foreign powers,

D

I think I could have convinced its authorities of the truth of the fact as contained therein, and I feel authorized to add, from the tenor of my official instructions from my Government, that notwithstanding the attack upon the forts in Your Majestys dominion in 1871, the Government of the United States entertains the most friendly feelings toward the Government and people of Corea.

I have now the honor to express to Your Majesty the hope that in view of the progress of events both in China and Japan, and in Your Majestys dominions, you will have arrived at the conclusion that the present time is opportune for the commencement of a new era by offering to the United States, under treaty, such commercial privileges as are granted to it by the two nations just mentioned.

I need not remind Your Majesty that

that the Kingdom of Corea is of all nations the only one remaining which excludes other nationalities from its territory; nor is it necessary to inform Your Majesty that the Government and people of the United States have never sought by aggression to extend their sovereignty in these waters, nor have they ever meddled or interfered with the religious or political institutions of independent nations.

The United States Government only asks, First, for the protection of its Citizens if stranded upon foreign shores, and, Second, for such Commercial facilities as Nations universally grant to each other in the present day— I need not ask Your Majesty's attention to the fact that Corea surrounded by nations some of which may be more or less anxious to extend their territory, would be materially strengthened and benifitted by making

making a friendly treaty with the United States, a strongly armed Power which has no such desire or intention, and which is indeed your nearest neighbor among the so called Western Powers of the world - lying as it does directly between Corea and Europe.

In view of these facts thus briefly stated, I respectfully submit to Your Majesty the propriety of consenting to receive a Commissioner duly appointed by the Government of the United States for the purpose of negotiating such treaty, or Your Majesty might exhibit a praise-worthy feeling deserving of your character as indicated in your letter to me, by selecting an Officer of sufficient dignity to confer with me personally on this subject either on shore or on board of this vessel while lying in the harbor of Fusan: for which purpose, or at least for receiving a reply to

this

this communication, I will return to the same anchorage in 42 days from this date.

I beg leave to assure Your Majesty that while in the waters of Corea no act of hostility against Your Majesty's subjects or their property - unless wantonly provoked - will be permitted by the Officers and men under my command.

Trusting that a bond of peace, friendship, and good understanding may now be brought about which shall henceforth and forever continue to subsist between America and Your Majesty's Kingdom.

I have the honor to be,
Your Majesty's humble Svt
R. W. Shufeldt.
Commodore U. S. Navy
On Special Service

No 1126

Enclosure 3.

Copy.
Translation

No. 18. Foreign Office
Tokio, the 29th the 5th month
the 13th year Meiji.

His Excellency
John A. Bingham,
Envoy Extraordinary and Minister
Plenipotentiary of the U. S. A.

Sir:

I have the honor to acknowledge the receipt of Your Excellency's communication dated the 21st instant, referring to the conversation which I had the other day with Your Excellency and Commodore Shufeldt, and requesting me that a letter from me addressed to the Corean Government, covering therein friendly communication of Commodore Shufeldt, shall be transmitted

to that Government.

I beg leave in reply to state that, owing to the repeated request of Your Excellency and having a desire to manifest the friendship towards Your Government, I will, in complying with your request, despatch by the next mail Steamer leaving Yokohama on the 29th Instant afternoon, my letter addressed to the Corean Government, with the said communication of Commodore Shufeldt enclosed therein, and I beg also to enclose for your information an English translation of my letter above mentioned.

I avail myself of this occasion to renew to Your Excellency the assurance of my highest consideration.

Inouye Kaoru.

H. E. J. Mr. Minister for Foreign Affairs.

No 1126

Enclosure 4.

Copy.

Translation

The 29th the 5th month
the 13th year Meiji.

His Excellency
Minister for Ceremony of the Corean
Government.

Sir:

I have the honor to communicate with Your Excellency to the effect that the U. S. Envoy on board of the U. S. Steamer "Ticonderoga" visited recently the port of Fusan with the object of presenting a letter to your Government through the Governor of Torai Fu by the medium of our Consul Hondo Masuki, wherein he expresses the desire of establishing friendly relations, but he left that port vainly, as the Governor refused to receive it. The

United States Representative here has requested me that the sentiment of the friendly mission will be conveyed to your Government, and that the said Envoy intends to proceed again to Fusan for that pourpose. I fear that if the U. S. Steamer would go again to Fusan, her appearance might cause an excitement among your people, consequently I suggested to him to defer his visit there. The friendly relations between Corea and Japan being especially intimate, and that between the United States of America and Japan existing many years since, I feel myself obliged to communicate to your Excellency the following: The said United States Envoy Commodore Shufeldt is the same person, who visited your country in 1867 and presented a letter to your Government expressing the gratitude of the U. S. Government for the kindness,

which your Government manifested in rescuing shipwrecked American citizens, and also requesting the negotiation of a treaty of friendship, to which letter your Government has given a favorable reply.

The object of the present mission is simply to repeat the former request; this you will be able to perceive from Commodore Shufeldt's letter which I beg to forward herewith.

The general State of the world is now greatly different from that of olden times, and we know from our own experience the impossibility of rejecting foreign intercourse, and China also has the same experience.

The best plan, which I recommend you for the interest of your country, is to comply with the request of the United States Government in a friendly sentiment treating them with sincere benevolence and being guided in intercourse with them by the prin=

ciple of right and justice. This is the only means of guarding against contempts from abroad, and of securing the right of independency of your country; otherwise a great injurious result may be arrivid at, and may endanger the welfare of your country. My Government of course has no intention of interfering with your Government's Policy. I however had a long experience in our foreign intercourse, and in reflecting on the part of China, I cannot hesitate to offer the above suggestions to Your Excellency.

The said Envoy will stay at the port of Nagasaki for sixty days from this date awaiting a reply to his letter. Your Government is reputed for civilities towards others, I have no doubt that your Government will give the answer desired, so that I can transmit it to the said Envoy.

I avail myself of this occasion

to renew to Your Excellency the assurance of my highest consid-eration.

Inouye Kaoru.

H. I. J. M's Minister for
Foreign Affairs.

P. S.

The accompanying letter of the United States Envoy has been written during his recent stay at the port of Fusan, and he mentions therein, that he will return to that port in 42 days from its date, and the specified time is approaching, I therefore suggested to him to wait a reply at Nagasaki for sixty days from its date, so I propose sixty days.

No 1126.

Enclosure 5.

Copy.

No 910.

United States Legation,
Tokei, May 29, 1880.

Commodore R. W. Shufeldt U.S.N.
U.S. Flagship "Ticonderoga".
Special Service. Yokohama,

Sir:

I have the honor to acknowledge the receipt of your note of the 26th instant and take pleasure in acquainting you that H.E. Mr Inouye has in compliance with the request which we made at our interview with him concluded to forward your letter to the Corean Govt., under cover of a letter addressed by him to that Govt., in which H.E. is pleased to say that he recommends in the interest of the Corean Govt. that it should comply with the request of the U.S. Govt. made through you in a

friendly spirit, and that he doubts not that the Corean Govt. will forward to H. I. J. Ms. Govt. for transmission to you the answer desired. I enclose herewith a copy of the letter addressed by Mr Inouye to the Minister of Ceremony of the Corean Govt., and which Mr Inouye advises me he will forward this day enclosing therewith your letter to the King of Corea.

You will observe that Mr Inouye states in his letter to the Minister of Ceremony that you will wait sixty days at Nagasaki for the answer of the Corean Govt. This is done to make sure that the Corean Govt will have ample time after the receipt of Mr Inouye's letter with its enclosure to make and return to him the answer to your communication which he has requested to be forwarded to him for transmission to you.

I beg leave to say that I received Mr Evarts' note to Mr Thompson, which you enclose with your communication of the 26th instant, on the 2d instant, the same bearing date the 1st ultimo.

Permit me to say further that it is the wish of Gov. Young that this action on his part may be treated as strictly confidential until the end sought for shall be attained.

Hoping that what has been done may be satisfactory to you and that success may wait upon you in your noble mission of peace and good will,

I have the honor to be,

Sir,

Your obedient servant,

(Sgd.) Jno. A. Bingham

No 1126

Enclosure 6.

Copy

U. S. Legation
Tokei, Japan, May 29, 1880.

Your Excellency:

I received per the hand of Mr. Ishibashi your letter of yesterday enclosing copy of your letter to the Minister of Ceremony at the Court of His Majesty the King of Corea, under cover of which you kindly inform me you will this day forward the letter of Commodore Shufeldt U. S. N. to His Corean Majesty. For this proposed act of courtesy on the part of His Imperial Japanese

To His Excellency
Inouye Kaoru,
H. I. J. M's. Minister for
Foreign Affairs.

Japanese Majesty's Government towards that of the United States of America I pray Your Excellency to accept my thanks. Be assured that your action will be highly appreciated by my Government. Should your good offices in this behalf result as I hope they may in bringing about a friendly commercial convention between the United States and Corea I do not hesitate to say that such convention will ensure very largely to the benefit of Japan and Corea.

Accept I pray Your Excellency the renewed assurance of my highest consideration

Signed — Jno A. Bingham.

No 1126.

Enclosure 7.

Extract from the Japan Daily Herald, May 29/80.

NOTWITHSTANDING the repulses the Americans have received in their endeavours to establish relations with the Government of Corea, by the execution of a treaty of friendship so as to secure succour to such shipwrecked mariners whom the accidents of the sea may cast upon her coasts, and ultimately a treaty of commerce, yet another attempt will be made. The U. S. corvette *Ticonderoga*, it is understood, will return thither at an early date, so soon as it shall be deemed expedient to do so.

Several years since, it will be remembered that Mr. Low, the then U. S. Minister to China, armed with the necessary credentials, and with full powers from his Government, was foiled in attempting to reach the capital. Admiral RODGERS' ships, that conveyed the expedition, were fired on from a fort on attempting to ascend the river leading to Seoul,—an action ensued, several lives were lost, the fort was captured, and the expedition returned to sea; but its object was entirely frustrated by the active hostility and persistent obstinacy of the Coreans. Since then, circumstances being more in their favour, the Japanese have succeeded where the Americans failed, and that, too, without active hostilities being had resort to. It is now proposed, we understand, making use of the friendly offices of Japan to open up communication with the Corean Government, and a despatch will be sent from here covering the President's letter to the Regent of that country, who in that way will be made its recipient.

An interesting translation of a letter from Fusan, printed in the *Osaka Nippo*, which we republished yesterday, showed that the efforts made at the beginning of this month by Commodore SHUFELDT, with the co-operation of Mr. KONDO, the Japanese Consul at that port, were made entirely nugatory, by the point-blank refusal of the Governor of Torai Fu to transmit any communication whatever to his Government at Seoul. Commodore SHUFELDT had not sufficient force to enforce attention to his demands, and probably had instructions from Washington to use none; he therefore left Fusan and came on to Yokohama, and put himself in communication with Mr. BINGHAM, the U. S. Minister here, and through whom

negotiations have been going on with the Japanese Government to secure its aid in furtherance of American designs upon the peninsula. It remains to be seen whether the Regent will dare to be so discourteous as to either refuse to receive Mr. HAYES's letter, to return it unread, or give a peremptory and emphatic "No" to American overtures. In the case of any of these possibilities, or rather probabilities, occurring, what will the American Government do? Will it again calmly accept the rebuff, and do nothing further; or will it take the necessary measures to make itself respected, by enforcing acquiescence in its reasonable demands. Bloodshed certainly, if possible, should be avoided; but it is questionable whether, unless under show of an overwhelming force, it will be. Why should the Americans permit any absurd jealousy of England, France, and Germany, to stand in the way of a joint operation? The Great Powers named have sufficient ships and forces in these seas to secure, probably without firing a shot, treaty relations with the Coreans for the whole of them. Why, we ask, is not co-operation invited? and the shilly-shally and up to this writing resultless policy of America be brought, at once, to an end.

No 1126.

Enclosure 7 (duplicate)

Extract from the Japan Daily Herald, May 29, 1880.

NOTWITHSTANDING the repulses the Americans have received in their endeavours to establish relations with the Government of Corea, by the execution of a treaty of friendship so as to secure succour to such shipwrecked mariners whom the accidents of the sea may cast upon her coasts, and ultimately a treaty of commerce, yet another attempt will be made. The U. S. corvette *Ticonderoga*, it is understood, will return thither at an early date, so soon as it shall be deemed expedient to do so.

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~~Referred to Mr. O'Connor~~ C. P.

Ans per Judge O'Connor's report Mr Adee

No 1127.



United States Legation,

Japan,

Tokei, June 1, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

Mr Kennedy, the British Chargé d'Affaires, writes to Mr Bingham in regard to Ross recently convicted of murder in our Consular Court at Yokohama, who, Mr Kennedy thinks, being an Englishman, should have been handed over to the British Court at Yokohama for trial; Mr Bingham replies and states at length his reasons for believing that Ross, being a seaman

duly enrolled on an American ship, and having committed a crime on board said ship in the harbor of Yokohama, is by our treaties and statute law only justitiable in our Court.

Enclosures.

1. Mr Kennedy to Mr Bingham May 22/80
2. Mr Bingham to Mr Kennedy " 27 "

No 1127.

United States Legation,
Japan,
Tokei, June 1, 1880.

Hon William M. Evarts,
Secretary of State,
Washington, D.C.

Sir:

On the 24th ultimo I received a note from J. G. Kennedy Esq, Her Britannic Majesty's Chargé d'Affaires in Japan, a copy of which is herewith, in which he is pleased to ask the grounds of the opinion which I had given to Mr Van Buren, as I reported to you in my No 1124, in relation to his jurisdiction to try and determine the complaint made

1127

made before him by the Master of the American merchant vessel "Bullion", to the effect that on the 9th ultimo one John Martin Ross, who was then and still is an American seaman, did on board of said vessel, when the same was in Yokohama harbor, kill and murder Robert Kelly, then being the second mate of said vessel.

You will observe that Mr Kennedy says in his note that he makes this enquiry because Mr Van Buren had in his opinion on the trial of the case expressed his doubts of his jurisdiction in the premises, but, in deference to the opinion given to him at his request by the American Minister,

he

he held the prisoner to answer for the crime charged to have been committed by him on board an American vessel within the territorial waters of Japan.

It is a matter of surprise and regret to me that the Consul General should first ask my advice, and then make apology to the public for following it and publicly express his doubts of its correctness.

Not willing to allow my opinion to be challenged by Mr Kennedy under cover of Mr Van Buren's doubts, I deemed it due alike to the treaty rights of the United States and to myself to give to Mr Kennedy the

grounds

grounds of my opinion as requested by him, and accordingly I made reply to his enquiry in a note

2/1127 of date the 27th ultimo, a copy of which I have the honor to enclose.

You will please observe in this reply that referring to Mr Kennedy's remark that the accused had demurred to the jurisdiction of the Consular General Court of the United States and had assigned as the sole cause for demurrer that he (the accused) was a native of Prince Edward's Island and a British subject, I stated that there was nothing in the original record & complaint to support the demurrer, wherefore the accused adopted the novel method of demurring to the

jurisdiction

jurisdiction of the Court upon his own affidavit; and I also suggested that although the question of the jurisdiction of our Consular Court could have been raised by plea and the accused could have testified on the trial as to the time thus made, under our Consular Court Regulations, this he omitted to do. I beg leave to say what I failed to express in words to Mr Kennedy, that, in my opinion, there was no evidence produced on the trial, as the record shows, that the accused, John Martin Ross, was born within the British possessions, & that he was at the time of the commission of the crime charged & now is a British subject. He had no right

of

& color of right under our Consular Court Regulations & under our laws to file an affidavit as the soleground of demurrer to the jurisdiction of our Consular Courts in Japan to try him, an American seaman, for the murder on the deck of the "Bullion" of the second officer thereof when within the territorial waters of Japan. You will please observe that Mr Kennedy assumes that the accused is a British subject. Courtesy forbade that I should say to him what it now seems proper I should say, — that in the absence of any testimony to the contrary, an American seaman serving as such on an American merchant ship within

these

these waters is presumably an American, under American law and subject to the Exclusive jurisdiction of the American Consular Courts in Japan.

Accepting for the sake of argument his assumption that the accused was born within a British province, in answer to his inquiry for the grounds of the opinion given by me to our Consul General, I said in my reply to Mr Kennedy that the jurisdiction in this case belonged to the United States exclusively, by virtue of treaty provision and statute law, and stated that this conclusion was supported by the provisions of the treaties of

1857

1857 and 1858 between Japan and the United States of America, to the effect that the Exclusive ~~ju~~ jurisdiction over all officers and seamen of the merchant and naval vessels of the United States when within Japanese waters and over all crimes committed thereon by such seamen and officers when within the territorial waters of Japan, was vested exclusively in the United States, whatever might be the nativity of such officers & seamen.

In further support of this Conclusion I pointed out to Mr Kennedy that by the treaty of date June 17, 1857, of the United States with Japan (published in the Consular Regulations, 1874, page 191, as in force) it is provided

(Article

(Article 4) that "Americans committing
"offences in Japan shall be tried by the
"American Consul General & Consul
"and shall be punished according
"to American law"; and that by
the treaty of the United States
with Japan of 1858, Article 9. it
is provided that "when requested
"by the American Consul, the
"Japanese Authorities will cause the
arrest of all deserters and fugitives
"from justice, receive in jail all
"persons held as prisoners by the Consul,
"and give to the Consul such assistance
"as may be required to enable him
"to enforce the observance of the laws
"by the Americans who are on land
"and to maintain order among the
"shipping". I also deemed it well

to

to call Mr Kennedy's attention to the provision of the 12th Article of the treaty of 1858 (ib. page 193) that "all the provisions" of the Convention of the 17th June 1857 "are incorporated in this treaty" of July 29, 1858. And further I noted for his consideration that the term "Americans", as used in these treaties, included not only citizens of the United States, natural born and naturalized, but "all others" who for the time being were domiciled in the United States of America and owed a temporary allegiance thereto, not unmindful that at the date of these treaties all persons whose nativity and domicile were in the United States of America were not citizens although they were

were Americans; and that the word "American" as employed in the treaties simply meant a person owing a present allegiance to the Government of the United States and who was entitled to protection from it.

I also called Mr Kennedy's attention to the fact that never before had any Foreign Power questioned the Exclusive jurisdiction of the United States over American merchant vessels, their officers and seamen (whatever their nativity) when within the open ports of Japan, & the exclusive authority of the United States Government to try all officers and seamen thereof for all crimes committed by

them

them on board of our merchant vessels when within said ports. I especially cited the case of Webb, an American seaman of British nativity and not a naturalized citizen of the United States, who was tried last year by our Consul at Nagasaki for the crime of murder committed by him on shore, and was sentenced to death, without challenge by the British Consul in that port, although the British nativity of the accused was proved on the trial.

As Mr Kennedy in his note to me referred to the ruling of the Court in the Queen versus Anderson, an American, who while serving as

a

a seaman on a British merchant-
man was charged with and tried
for manslaughter committed on
board said vessel when within
French territory, I took occasion
to remind him that the Court
in Bank in that case held and
decided that the Courts of Great
Britain had jurisdiction over and British
law prevailed in regard to all offences
committed on board British merchant
ships by whomsoever committed, and
further that the ship was within the
Admiralty jurisdiction of Great Britain
and that the prisoner had been rightly
tried and convicted in the Criminal
Court (1 English Law Reports of Crown
Cases Reserved). And in reply to his
remark that this case was so ruled

only

"only because France had declined
"jurisdiction", I said to Mr Kennedy
that in the case of Ross Japan,
within whose port the crime was
committed on board the American
merchant ship "Bullion", not only declined a
jurisdiction of the case, but in fact
had by solemn treaty surrendered to
the United States exclusive power
to try all Americans (including
all American seamen) for crimes
committed by them within the ter=
ritory of the Japanese Empire,
either on board American vessels
when within the territorial waters
of Japan & on shore.

And it seemed to me proper also
to remind Mr Kennedy that in
1875 the British Consul had refused

in

in Yokohama to take action against a British subject charged with having effected the escape of two criminals from the United States Consular General Jail in that city, on the ground that English law provided no penalty in such case because the jail was not British (For this action of the British Consul see Mr Van Buren's letter to me, Foreign Relations for 1873 - part 2, page 800). Surely the British Consul would be constrained to refuse process against Ross for the murder on board of the "Bullion" of its second officer, because that vessel is not British! - and for the further reason that the vessel was by virtue of existing treaties

Exclusively

Exclusively under the jurisdiction of the United States and the crime committed on board thereof Exclusively Cognizable in the tribunals of the United States. I respectfully refer you for a further expression of my views to the copy of my letter to Mr Kennedy herewith enclosed and also to my No 1124 transmitting the record in the case, and especially to Section 4100 Rev Stats. Inasmuch as full fifty per cent of our American seamen are of foreign nativity and not naturalized citizens of the United States, it is of the first importance that the Exclusive jurisdiction of the United States over our naval and merchant vessels and seamen when within

within Japanese territory, as secured by treaty and declared,
as I have shown in my enclosures, by
our Statutes, shall be maintained in
the future as in the past.
As by the law of nations crimes
committed upon the high seas either
upon ships of war or merchantmen
are considered as committed in the
territory of the State to which the ship belongs,
because only the laws of the
latter are infringed, and conse-
quently only the jurisdiction of
the latter is called upon to
adjudicate, it seems to follow
that the same rule must obtain
by virtue of our existing treaties
as to all crimes committed on board
our war and merchant vessels when
within Japanese territory. Please

see

Please see Wheaton's International Law, sixth Edition, page 165, paragraph four, for Consular jurisdiction in foreign countries under treaties.

I have the honor to be,

Sir,

Your obedient servant,

Wm. A. Bingham

No 1127

Enclosure 1.

Copy.

British Legation,
Tokio, May 22, 1880.

Sir:

I have the honor to inform your Excellency that Her Majesty's Acting Consul in Yokohama has officially reported to me the circumstances connected with the recent trial and conviction in the United States Consular Court at Yokohama of a seaman claiming British protection named John Martin Ross for the murder on the 9th Instant of the second mate of the American Merchant Ship "Bullion" in the port of Yokohama, and of which

The Honorable
John A. Bingham,
Envoy Extraordinary and Minister
Plenipotentiary of the United States
in Japan.

which ship Ross was one of the crew.

The circumstances of the case are doubtless already well known to Your Excellency, but I consider it desirable that I should draw your special attention to the fact that an United States Court has assumed and exercised jurisdiction over a British subject for a crime committed in a Treaty Port where Her Majesty's Government has established a regular Court of justice presided over by a professional judge thoroughly competent to deal with the case according to law.

The Report of the proceedings in the United States Consular Court states that Counsel of the prisoner demurred to the jurisdiction of the Court on the ground that Ross claimed British protection, he having filed an affidavit to that effect; and that the United States Consul General accordingly adjourned the case in order to consider the demurrer.

The Report further states that on the 18th Instant the United States Consul General gave his decision on the demurrer in which he said that he had given the subject careful consideration, that he had concluded that his court had exclusive jurisdiction in the matter, and that he accordingly maintained the jurisdiction which he had already assumed. The United States Consul General was careful, however, to state in court that he had still some doubt as to the position taken up by him, and that his decision in the matter had been influenced by the United States Minister in Japan.

As soon as Mr. Dohmen Her Majesty's Acting Consul at Yokohama, had obtained positive knowledge that the demurrer on the question of jurisdiction had been overruled, and that the trial was being proceeded with, he addressed on the morning of the 19th Instant to General van Buren a formal request for the surrender to

to him of the prisoner Ross in order that said prisoner should be arraigned before Her Britanic Majesty's Court for Japan to be dealt with according to law.

To Mr. Dohmen's request General Van Buren, as Your Excellency is aware, returned a formal refusal.

Assuming that the said John Martin Ross is really a British Subject, and in view of the fact that the murder for which he has been convicted occurred on board a merchant vessel in the harbor of Yokohama, I consider it to be my duty to point out to Your Excellency that according to the views of Her Majesty's Government, as recorded in the archives of this Legation, it is clear to me that Ross could only be tried by a Court of his own nationality, and a jury of his own countrymen: and it is needless therefor to add that the United States Consul General in refusing to Her Majesty's Acting Consul the surrender of Ross for trial in the British Court has assumed a very

very serious responsibility which I cannot allow to pass unnoticed, and which I feel bound to report to Her Majesty's Government.

To show to Your Excellency that the position taken up by General Van Buren has not the unanimous support even of the United States Authorities themselves, I beg leave to refer Your Excellency to the able circular letter, on the subject, issued by the Honorable G. F. Seward when Consul General in Shanghai to the United States Consuls in China. That circular is dated the 3d of August 1868, and amongst other arguments which he adduces in support of his views, Mr. Seward says:- "My rule "has been to take jurisdiction of all persons "on board American vessels within my "district excepting when offences have "been committed on such ships by persons, "not citizens, jurisdiction of which would, "in a part of Christendom, be taken "by the authorities of the country, and "not by the Consular Representative of our

"our country; and to take jurisdic-
"tion over Americans committing
"offences on board ships of other flags
"when such offences are of so grave
"a character that the local author-
"ity in a port of Christendom would
"supersede that of the Consul."

Further on Mr. Seward writes:- "It is
"urged by some that the Consul of the
"Ship has authority to try and de-
"termine all cases arising on a ship
"of his country in the waters of China.
"This proposition seems to me inadmissi-
"ble." And Mr. Seward terminates
his circular by stating: "I at least
"should greatly object, even if my
"legal right were established beyond
"doubt, to try a British, or French
"subject, when Courts of those na-
"tionalities are existent here side by
"side with my own."

The above views are, I believe,
shared by Her Majesty's Government,
who, as I am advised, consider that
the special jurisdiction exercised by

by a British or United States Consul in respect to grave offences committed on board ship in the waters of China or Japan is quite distinct from his ordinary Consular jurisdiction by virtue of which he takes cognizance of offences connected with the ordinary discipline and management of the vessel. The special jurisdiction is regulated by treaty, and can only be exercised by the Consul over the subjects of Great-Britain, or the citizens of the United States as the case may be: and further that the fact of forming one of the crew of a foreign ship will not, in case of grave offenses, give the foreign Court jurisdiction over the offender, unless he be a subject, or citizen of the country under whose flag he sails. In signing articles it is urged that the foreign seaman does no more than submit to the discipline of the ship according to the law of the country, and that he cannot be held to have become for all purposes a subject or citizen of the country

country or made amenable to the criminal laws of the country to which the ship may belong.

I am not aware that the Government of the United States has ever held or published views differing from those quoted above, nor have I knowledge of any understanding having been come to between Her Majesty's Government and the Government of the United States upon this question of consular jurisdiction in China and Japan over seamen serving on board merchant vessels.

As regards the authorities cited by the United States Consul General in his decision on the demurrer, it appears to me that the passages from Wheaton have reference only to the punishment of offences committed on the high seas, or on board of vessels in some place not within the jurisdiction of any other state; and the case of the Queen versus Anderson had reference only to the concurrent jurisdiction of the British and French Courts. The

The United States Consul General, as Your Excellency will observe, entirely omits to refer to the fact that the Japanese Sovereign has by treaty with England and the United States surrendered to each of those Powers, so far as regards their respective subjects and citizens respectively, his inherent sovereign right of criminal jurisdiction in the matter of all crimes or offences committed within his territory. By virtue of these treaties Great Britain and the United States maintain within the Empire and waters of Japan their full and complete jurisdiction over their own subjects and citizens respectively, but Japan has not assigned, and could not assign, her sovereign right of jurisdiction over the subjects and citizens of any one Treaty Power to the authorities of any other Treaty Power. Consequently the Consular Courts of Great Britain and the United States, established, as General Van Buren says they are, under the Treaties and laws framed in pursuance of them, have

have and can have only a personal jurisdiction over their own subjects and citizens, and although in the present case the Consul General of the United States declares that Your Excellency maintains that the exclusive jurisdiction to try the prisoner is in the United States Consular Court, he does not adduce a single authority or argument in support of Your Excellency's proposition.

It cannot be denied that in the case of the Queen versus Anderson there are some dicta of the judges strongly in favor of the doctrine that a foreigner on the articles of a British ship might be properly included under the term British Seaman, but in considering that case, it should be remembered, I submit, that the point under discussion then was not whether the central Criminal Court had exclusive jurisdiction, but whether, seeing that the French Government had declined to exercise their undoubted jurisdiction, the British Court had or had not a con-

concurrent jurisdiction which it could properly exercise.

But in the case of Ross the question is otherwise. The crime with which the offender is charged was committed within the district and jurisdiction, (so far as British subjects are concerned) of Her Britannic Majesty's Court for Japan, and as between the prisoner and the said Court for Japan no question could arise as to the jurisdiction.

As I have already had the honor of pointing out to Your Excellency, the United States Consul General admits that a difficulty presented itself to his mind as to whether the United States Consular Court in Japan could hold to answer any but American Citizens, and he says that although his mind is not now entirely free from doubt upon the question, he has concluded in deference to the opinion of the United States Minister to maintain the jurisdiction he has already assumed. From this statement it is obvious that neither Your Excellency nor General Van Buren go the length of holding -

holding absolutely that the fact of the prisoner forming one of the crew of the American vessel constitutes him for the moment ipso facto a citizen of the United States, and yet to sustain the position assumed in this case by the United States Consular Court such citizenship must be asserted.

Erroneous hypothesis

I beg leave to submit the foregoing considerations to Your Excellency's appreciation, and I venture to hope that you will be so good as to furnish me with the grounds upon which you advised General Van Buren that he had exclusive jurisdiction in this case, in order that I may submit the same for the consideration of Her Majesty's Government.

I have the honor to be,

Sir,

Your Excellency's most obedient

Humble Servant

J. J. Kennedy.

H. B. Ms Chargé d'Affaires in Japan.

No 112.

Enclosure 2.

Copy.

No 90.

United States Legation,
Tokei, May 27, 1880.

Sir:

I have the honor to acknowledge the receipt on the 24th instant of your note dated the 22d instant, in relation to the trial and conviction before Thomas B. Van Buren Esq. United States Consul General at Yokohama, of John Martin Ross, an American seaman charged in due form of law with the murder on the 9th instant of Robert Kelly, the 2d officer of the American merchant vessel "Bullion", on board of said

J. G. Kennedy Esquire
Her Britannic Majesty's
Chargé d' Affaires
&c &c &c

said vessel and in the harbor of Yokohama. It appears from the record that said Ross was lawfully engaged and enrolled as an American seaman on said vessel in the United States of America and that he was at the time of the commission of said crime on board thereof, and still is an American seaman, owing service as such on board of the "Bellvin" and subject to the laws and jurisdiction of the United States.

You print out that Ross demurred to the jurisdiction of the U.S. Consular General Court in the premises, and assigned as the sole cause of demurrer that he, the accused, was a native of Prince Edward's Island, a British possession, and therefore a subject of Great Britain. There being nothing in the original record to support the demurrer, the accused, therefore, filed his own affidavit, averring his nativity and that he was a British subject. The Consul General, very properly in my opinion, overruled the demurrer. It was com-

petent for the accused to have raised the question of jurisdiction by plea and to have testified on the trial in his own behalf and before the Consular General Court, but this he omitted to do.

You further acquaint me that Her Britannic Majesty's Acting Consul, Mr Dohmen, made request of Mr Van Buren, the United States Consul General, for the surrender to him of the accused John Martin Ross, to be dealt with by H.B.M. Court in Japan, and that Mr Van Buren refused to comply with that request, wherefore you are pleased to say "Assuming that the "said John Martin Ross is really a British "subject" and "in view of the fact that the "murder of which he has been convicted "occurred on board of a merchant vessel "in the harbor of Yokohama" you consider that by his refusal to surrender Ross for trial in the British Court "the "United States Consul General has assumed "a very serious responsibility," which you cannot allow to pass unnoticed and which

you

you "feel bound to report to H. Ms. Govt."

Referring to the fact that at the request of Mr Van Buren I had given him an opinion sustaining his jurisdiction in the case, you request me to furnish you the grounds upon which I so advised him, in order that you may "submit the same for the consideration "of Her Majesty's Government."

In my letter to Mr Van Buren and in reply to his enquiry I said, "Upon the "question of your (the Consul General's) juris= "diction over American seamen of foreign "nationality in our merchant service charged "with crimes committed on board our merchant "vessels when within the harbor of Yokohama "it is my opinion that the jurisdiction in "such case belongs to the United States "exclusively by virtue of treaty provisions "and statute law." The treaty provisions to which I refer are as follows:- "Americans "committing offences in Japan shall be tried "by the American Consul General or "Consul and shall be punished according "to American law" (Treaty of 1857); and

all the provisions of this Convention (1857) are declared to be incorporated in the Treaty of 1858; I also refer to Article 9 of the latter treaty, viz: that "when requested by the American Consul the Japanese "Authorities will cause the arrest of all "deserters and fugitives from justice, receive "in jail all persons held as prisoners by "the Consul and give to the Consul "such assistance as may be required "to enable him to enforce the observance "of the laws by the Americans who "are on land and to maintain order among "the shipping". The word "Americans" as used in the treaty provisions cited includes not only all citizens of the United States of America, but also all persons whose domicil of origin & adoption is in the United States, and especially all American seamen of whatever nationality who have been lawfully engaged and enrolled as such in the merchant & naval service of the United States. The domicil of the seaman, like that of the soldier, is held to be in the country

in whose service he is and to which for the time being he owes allegiance and from which he is entitled to protection and is subject to its laws and, save in foreign ports, is always within its jurisdiction, and, as in this case, by virtue of the treaty provisions made with the United States by Japan, is subject exclusively to the jurisdiction of the United States when in Japan for all crimes committed by him against our laws on board of our vessels and against the persons of the officers & crew thereof. In this I find myself supported by your own Court in the Queen versus Anderson, in which it was ruled that the Courts of Great Britain have jurisdiction over and British law prevails in regard to all offences committed on board British merchant ships by whomsoever committed. I note your remark in regard to this case, that the jurisdiction was only held because France, within whose territory the offence charged had been committed on board a British merchant vessel by a British seaman of American nativity, declined jurisdiction. In the

1st English Law Report of Crown cases reserved page 16.

case of Ross Japan, within whose territory the crime was committed not only declined to take jurisdiction, but in fact had by solemn treaty surrendered to the United States exclusive power to try all Americans (including all American seamen) for crimes committed by them within the territory of the Japanese Empire either on board American vessels when within the territorial waters thereof or on shore.

By our statute* it is provided that "jurisdiction in both civil and criminal matters shall in all cases be "exercised and enforced in conformity "with the laws of the United States, "which are hereby, so far as is necessary "to execute such treaties respectively "(with Japan, China &c.) and so far as "they are suitable to carry the same into "effect, extended over all citizens of the "US in those countries and over all others "to the extent that those treaties justify "or require". This statute also extends for the same purpose "the common law and

* {Rev. Stat. Secs. 4083, 4100, 4102, 4104

the land of equity and admiralty over such citizens "and others" in those countries. Now please note that the persons other than citizens of the U.S., described as "all others", must entraed American seamen in the merchant & naval service of the U.S. as they are included in the treaty provisions before cited by the words "Americans", "deserters", "fugitives "from justice" &c. That this is the construction of the treaties and statute accepted hitherto cannot be questioned. Permit me to say that never before this case arose, so far as I am advised, has any Foreign Power challenged the authority of the U.S. Consular Courts in Japan to try all American citizens and "all others" being American seamen lawfully engaged in the merchant & naval service of the U.S. of America, and on conviction to punish them according to American law, for all offences committed by them in violation of the laws of the U.S. and on board of American vessels when within the

territorial waters of Japan. On the contrary, this power has been uniformly exercised by our Consuls in Japan over American seamen of foreign birth, and who were not naturalized citizens of the United States, in all the open ports of Japan, whether charged with grave & minor offences alleged to have been committed by them in Japan and on board of our vessels. Only last year at Nagasaki our Consul tried a native of Ireland not a citizen of the U.S., but an American seaman, for the murder on shore of one of the crew of the Russian corvette "Grayster", and, upon conviction thereof, sentenced him to death with the approval of the Govt. of the U.S. and without question on the part of H.B.M's. Consul at Nagasaki, the fact being notorious and proved on trial that the accused was of Irish nativity. Allow me further to say that in 1875 an American seaman of a British nativity, who was not a citizen of the U.S., then serving on board the

U.S. "Lackawanna", committed an offence on shore, was brought before Mr Van Buren to answer, who, being advised that the said Mc Condrill was an Englishman, refused to entertain the complaint, whereupon the said Mc Condrill was taken before H.B.Ms. Court at Yokohama, the learned Judge Goodwin presiding, who entertained and tried the case and convicted and sentenced the accused, to which proceeding I objected and concerning which Judge Goodwin, as my record shows, said that but for the refusal of the American Consul General, Mr Van Buren, to take cognizance of the case, he would not have tried the accused. I reported my action to my Government and it was approved. The subject of jurisdiction over persons committing offences within the territory of Japan was considered between the Governments of the U.S. and Great Britain, the result of which, as I was advised by my Govt. Nov. 2d, 1875, was that as to offences committed on shore in Japan

by persons enlisted on board of national vessels of war, jurisdiction should be remitted to the Consuls of the country under whose flag the offender is serving "on the ground that all persons who have "taken service under a Power are for the "time being under the jurisdiction of that "Power exclusively and amenable to "its tribunals". As I understand it, your Govt. entertains the same opinion. I received no instruction in regard to jurisdiction over merchant seamen who may commit offences on board our vessels & on shore in Japan. In this connection permit me to say that the reasons assigned in my instructions above mentioned as to our jurisdiction over American naval seamen for offences committed by them on shore in Japan apply with equal force to American merchant seamen, as it is only because of the treaty provisions that an American naval seaman, & any other American committing a crime on shore in Japan could be held to

answer therefor only before our consular courts to the absolute exclusion of the Japanese tribunals.

Riquelme declares the public law of Europe on this subject as follows:

"Crimes committed on the high seas, "whether on ships of war or merchantmen, "are considered as committed in the "territory of the State to which the ship "belongs, because only the laws of the "latter are infringed, and consequently "only the jurisdiction of the latter is called "upon to adjudicate, whether the accused "be of the nationality of the ship or a foreigner "× ×× If the ship on board of which the "crime has been committed arrives then at a "port, the jurisdictional right of the territory "to which the ship belongs over the accused "does not on that account cease. So that "if one of these (accused) were a foreigner "subject to the State to which the port at "which the ship stops belongs, even in that "case it is the right of the captain to "detain him (the accused) on board, that "he may be judged by the tribunals of the

"ship's country." The same authority declares that when the crime is committed while the ship is in territorial waters, if on board a men-of-war the principle of ex-territoriality covers the ship from all foreign intervention & investigation. But he adds when the crime has been committed on board a merchantman in a foreign port the rule is different, because, "in default of treaties determining it," "the territorial "jurisdiction is entitled to punish the crime." There is a treaty provision which surrenders to the U.S. the territorial jurisdiction of Japan to punish crimes committed by Americans therein, and clearly surrenders to the U.S. exclusive jurisdiction over all American merchant and naval vessels when within Japanese ports and the power to try before the U.S. Consul General & Consul all crimes thereon committed within Japanese waters by American seamen.
If the jurisdiction of the U.S. Consular General Court be denied in this case, it is clear that the Japanese

tribunals under Existing Treaties — cannot try this offender, and if this American seaman, guilty of a crime committed on board an American vessel within the port of Yokohama and in violation of the laws of the U.S., is to be sent to U.S. Court in Japan for trial, it may well be said that U.S. Court cannot take cognizance of a crime committed by an American seaman on an American deck in a Japanese port and in violation of American land, over which seaman by treaty the Consuls of the U.S. in Japan have jurisdiction. In 1873 — I was officially informed by Consul General Van Buren that he had applied to "the British Consul (in "Yokohama) for the arrest of a "British subject charged with having as- "sisted in the escape of two no- "torious criminals from the jail "(of the U.S. Consulate General in "that City), and that he (the Consul "General) was informed by the

"British Consul) that English law
"provided no penalty in such case
"because the jail was not British.

My conclusion is that by virtue of the treaties of the U.S. of America with Japan and the laws enacted by the U.S. to carry the said treaties into Execution, Ross, being an American seaman, was justitiable only in the tribunals of the United States for the crime whereof he was convicted in the U.S. Consular General Court.

I have submitted this important question to my Govt. for consideration and await its instructions thereon.

I have the honor to be,
Sir,
Your obedient servant,
(Sgd) Jno. A. Bingham

Mr. Scudder

No 1128.



United States Legation,

Japan,

Tokei, June 2, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

Customs report for April. Imports exceed exports in value yen 2,245,854 41.

Export of specie and bullion in excess of the import yen 480,179 40.

Enclosures.

Duplicate copies of the report.

No 1128.

United States Legation,
Japan,
Tokei, June 2, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

1/ Herewith I have the honor to enclose for your information the official Customs report of Japan (in duplicate) for the month of April last.

The declared value of the Export of domestic productions for the month was gold yen 1,188,000 98/100; and the declared value of the import of foreign productions

for

for the same period was in gold yen 3, 433, 855 39/100, showing an excess of imports to the amount of yen 2, 245, 854 41/100.

The quantity of Specie and bullion imported during the month Exceeded the Export thereof to the amount of yen 480, 179 00/100, in round numbers.

I have the honor to be,

Sir,

Your obedient servant,

Wm. A. Kingsbury

No 1129.



Made

United States Legation,
Japan,
Tokei, June 15, 1880.

Mr Bingham
to the
Hon Secretary of State.

Subject.

Acknowledging receipt of Instructions 504 and 505 - and of Special Instruction of the 30th April in relation to Circulation of gold and silver in Japan &c. Answers to the enquiries of the latter Instruction have been asked.

No 1129.

United States Legation,
Japan,
Tokei, June 15, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

I have the honor to acknowledge the receipt of your Instructions numbered 504 and 505, respectively, and also Instruction marked "Separate" dated April 30th last in relation to the further interrogatories propounded through the State Department by the Honorable the Secretary of the Treasury.

In

In accordance with this Instruction I on yesterday transmitted a copy thereof to His Excellency Mr Inouye, the Foreign Minister, together with a note in which I requested His Excellency to be pleased to obtain full answers to the inquiries contained in the Instruction, and acquaint me thereof, that I might forward them as instructed to you.

I am, Sir,

Your obedient servant,

Wm. A. Burlingame

Ack

Acadia

No 1130.



United States Legation,

Japan,

Tokei, June 15, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

Mr Bingham has notified the Agent of the lessor of the Legation premises that the lease is approved for one year.

No 1130.

United States Legation,
Japan,
Tokei, June 15, 1880.

Hon William M. Evarts,
Secretary of State,
Washington, D.C.

Sir:

Referring to Instruction 505 of date the 27th of April last, in relation to the renewal of the lease of the premises now occupied by this Legation, I have the honor to state that I have in accordance therewith notified the agent of the lessor here that you approve the contract of renewal for the current year only, with the privilege of a

further

further remand on the 13th

of March next.

I have the honor to be,

Sir

Your obedient servant,

Wm. A. Leighton

To War Dep't for Signal Office. July 14. 1880. Dan Ouder

made

No 1131.

DEPARTMENT OF STATE
JUL 13 1880
RECEIVED

United States Legation,

Japan,

Tokei, June 15th, 1880.

Mr Bingham

to the

Hon. Secretary of State.

Subject.

Enclosing meteorological observations.

Enclosures.

Meteorological tables, April 11 – May 3rd 80.

No 1131.

United States Legation,
Japan,
Tokei, June 15, 1880.

Hon William M. Evarts,
Secretary of State,
Washington, D.C.

Sir:

I have the honor to enclose herewith for your information tables of reports from the Imperial Meteorological Observatory of Tokei, Japan, from the 11th April to the 5th of July inclusive.

I have the honor to be,
Sir,
Your obedient servant,
Jno. A. Bingham

Correction made

W Adee

No 1132.



United States Legation,

Japan,

Tokei, June 15, 1880.

Mr Bingham

to the

How Secretary of State.

Subject.

Correcting the statement made in his No 1110 Mr Bingham says that the amount of gold and silver Exported from Japan from 1530 to 1671 was 500,000,000 rios instead of — 500,000,000 Catties.

No 1132.

United States Legation,
Japan,
Tokei, June 15, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

Referring to my No 1110 of the 6th ultimo in which I had the honor to transmit duplicate copies of "Memoirs of the Science Department, University of Tokio, I beg leave to say that having reported therein that the Export of bullion in bars and Specie from 1550 to 1671 was stated by table 7. page 49. of the Memoirs to have been in gold and silver —

500,000,000

500,000,000 cattes, I mistook the words prefixed in the table to the figures, viz: "said ca." to signify the supposed quantity in cattes, not the value in coin of the export of the precious metals for the hundred and eleven years from 1550 to 1671. Having doubts of the exactness of the report in this particular, I took occasion to enquire of Professor C. Netto, the gentleman who made it, who kindly informed me that I had been misled by the words prefixed, "said ca.", in the table and that it was 500,000,000 reis, not cattes, which was the estimated Export of bullion from Japan in bars and in Specie during that period, to wit: from 1550 to 1671.

I beg leave to have the

the text of my No 1110 as trans-
mitted to you corrected so as
to read 500,000,000 rios instead
of 500,000,000 cattiers. I shall make
the like correction in my record
striking out the words "the catty
being equal to one and a third
"pound avoirdupois".

I have the honor to be,

Sir,

Your obedient servant,

Wm A. Pruyn

No 1133.



United States Legation,

Japan,

Tokei, June 16, 1880.

Mr Bingham

to the

Hon Secretary of State

Dom 4
Asia

Subject.

Mr Bingham has procured and forwarded to Mr Jones his Exequatur as U.S. Consul at Nagasaki.

No 1133

United States Legation,
Japan,
Tokei, June 16, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

Referring to Instruction No 500 enclosing commission of Mr Alexander C. Jones to be United States Consul at Nagasaki, I have the honor to say that I have received from His Excellency Mr Inouye, His Imperial Japanese Majesty's Minister for Foreign Affairs, an Exequatur issued by His Imperial Japanese Majesty, recognizing Mr Jones

as

in the quality of United States Consul, and have transmitted the same, together with his commission, to Mr Jones through Mr Consul General Van Buren.

I had the pleasure to meet and entertain Mr Jones on the 14th instant on his way to his post of duty.

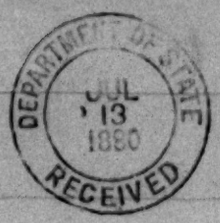
I have the honor to be,
Sir,
Your obedient servant,
Wm A Bingham

Referred to Mr. O'Connor. C.F.

See note to the Netherlands Aug 10. 1880

Wade

No 1134.



United States Legation,

Japan,

Tokei. June 16, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

Mr Bingham reports the action of Consul General Van Buren, as communicated to him by a despatch dated the 27th ult., in relation to the motion made by Mr Hill, on behalf of the accused in the case of the U.S. of America against John Martin Ross, for an appeal from the judgment of the Consul General to the U.S. Minister in Japan. The Consul General

having overruled the motion, transmitted the same to Mr Bingham for his consideration. Mr Bingham is of opinion that he has no jurisdiction to entertain the appeal from the aforesaid judgment, and that by virtue of the statute the conviction in the case, having been concurred in by the Consul General and his associates and approved by him, the judgment thereon by the Consul General is final.

Enclosure.

Mr Bingham to Mr Van Buren,

June 14, 1880.

No 1134.

United States Legation,
Japan,
Tokei, June 16, 1880.

Hon William M. Evarts,
Secretary of State,
Washington, D.C.

Sir:

On the 27th ultimo Mr Consul General Van Buren acquainted me that in the case of the United States of America against John or Martin Ross, an American seaman lately tried and convicted before the Consular General Court at Yokohama of the murder of Robert Kelly on board of the American merchant ship "Bullion", when the

same

same was at anchor in the harbor of Yokohama, Mr Hill, the counsel of the accused, had filed a notice of appeal to me from the Consular judgment in the case, and requested the allowance thereof by Mr Van Buren, and that the latter had refused the request on the ground that the statute makes no provision for an appeal from his judgment in the case.

On the 14th instant I replied to the Consul General, to the effect that having on the 22d ultimo, in accordance with section 4102 Revised Statutes, approved the conviction in this case, it was my opinion that I had no appellate jurisdiction to open and try

or

1/ or reveiw the case. I have the honor to inclose a copy of my reply to Mr Van Buren.

It is my opinion that by section 4106 Revised Statutes all convictions — by the Consul General of the United States in Japan in capital cases in which the associates concur in opinion are final when the conviction is approved (under section 4102 — Revised Statutes) by the Minister of the United States in Japan. If under the latter section I should disapprove the conviction, it would be void; and if, under section 4106 Revised Statutes, a capital case should be certified to me in which by the record it appeared

That

that one or more of the associates differed in opinion from the Consul, it would be my duty, as provided in said section, to either enter up judgment on the record, & remit the same to the Consul with instructions how to proceed further in the case. Having approved the conviction in the case, and all the associates having concurred therein with the Consul General, it seems to me clear that I have no appellate jurisdiction in the matter and cannot review on Mr Hill's petition for appeal to me either the judgment of the Consul General and his associates, & my own approval thereof under the statute.

I

I beg leave to say for your information that Mr Hill, of counsel for the accused, assigns as cause for appeal that the Consular Court refused the motion of the accused to dismiss the complaint for the murder on board of the "Bullion" by the accused of the 2d officer of that vessel for the reason that no indictment & presentment had been preferred by a grand jury, and that a petit & common jury was not summoned and impaneled to try the charge of murder. It is clear to my mind, as indicated in my No 1124, that the Act of 1860 which confers upon the Consul General and four associates

associates, citizens of the United States, authority to try an American seaman for murder committed on board and American merchant or naval vessel, when within the territorial waters of Japan, is valid under Article 1, section 8, clause 18 of the Constitution, to wit:- "The "Congress shall have power to make "all laws which shall be necessary "and proper to carry into Execution "the foregoing powers and all other "powers vested by this Constitution "in the Government of the United "States or in any Department or "officer thereof." As by Article 2, section 2, clause 2, the President with the advice and consent of the Senate, two thirds thereof con-

curring

concurring therein, is vested with power to make treaties, it seems to follow that the Congress is authorized to pass the laws necessary to enforce the treaties so made by the United States. The Act of 1860 having been enacted to carry into execution the treaties made with Japan and China, and the same having been enforced in Japan, without question either by our own Courts or the Courts or Government of Japan or any foreign power, for twenty years, may, I think, be supposed to be Constitutional.

I consider that the question now raised by Mr Hill was substantially ruled fifty years ago in favor of the power of Congress so to legislate by

by the Supreme Court of the United States in the case of the American Insurance Company versus Canter, 7th Curtis, pages 685-691, Mr Chief Justice Marshall delivering the opinion, wherein it was decided that the Act of Congress creating a territorial legislature and judicial tribunals in the then territory of Florida was Constitutional, and that the decree of a Court, "consisting of a Notary and five "jurors", created by the territorial legislature of Florida, was valid. The learned Chief Justice and his associates were not unmindful when this judgment was rendered that by the seventh article of amendment of the Constitution,

Ratified

ratified 15th December 1791, it was provided that "in suits at "common law where the value in "controversy shall exceed twenty "dollars the right of trial by "jury shall be preserved." The amount involved in this case was three hundred and fifty six bales of cotton, yet it was held by the Supreme Court that this property of great value passed to the purchaser under the decree of a Court made upon the finding of a jury composed of five persons only. I may be permitted to add that them, as now a jury, as the term is used in the Constitution of the United States, meant twelve men. The Supreme Court was careful

to

to say that the territorial Courts of Florida were not Constitutional Courts, and that the jurisdiction with which they were invested was no part of the judicial power defined in the third article of the Constitution, "but is conferred "by Congress in the execution "of those general powers which "that body possesses over the "territories of the United States". Following this ruling of the Supreme Court, with which I have long been familiar and the correctness of which has never been questioned, I concluded that the jurisdiction with which our Consular Courts in Japan are invested by the Act of 1860 and

and the subsequent acts was no part of the judicial power as defined in the third article of the Constitution of the United States, but was conferred by Congress in the Execution of the general power "to make all laws necessary "and proper to carry into execution" the treaty power of the United States.

I may be permitted to call your attention to the fact that Her Britannic Majesty's Order in Council to enforce the jurisdiction acquired by treaty by Great Britain in Japan and China, made by and with the advice of Her Majesty's Privy Council in 1865, provides neither grand nor petit

jury

jury as at common law for the trial in Her Majesty's Courts in Japan of crimes committed therein by British subjects, but on the contrary provides for a list of jurors for each year as our statute provides for a list of assessors & associates for each year; and the Order also provides (Article 4, section 30) that a jury shall consist of five jurors, while our statute provides that in capital cases the Court shall consist of the Consul and at least four associates, citizens of the United States drawn by lot from the "list." The Order in Council requires a unanimous verdict

to

to convict (R.S. section 32), while our statute requires that to convict of murder the four associates shall each concur with the Consul, and that no person shall be thus convicted unless the United States Minister in Japan "shall also approve the same" (Revised Statutes, section 4102). By magna charta, as you know, trial by a jury of twelve men is required in all cases of felony, and by the Constitution and laws of England no man therein is to be held to answer for a capital crime save upon the accusation & indictment of a grand jury, twelve thereof at least concurring therein,

and

and that the truth of such accusation & indictment can only be enquired into thereafter and confirmed by the unanimous verdict of a jury of twelve of the neighbors and peers of the accused. So it seems that notwithstanding this absolute requirement of the great charter and the general laws of Great Britain, Her Majesty and her Privy Council consider it competent by act of Parliament and Orders in Council to establish local courts in Japan and try British subjects therein for capital and all other crimes by them committed within the treaty jurisdiction of Great Britain in Japan by a jury of five men and without the accusation

or

a indictment preferred by a grand jury.

So far as I am advised, none of the Treaty Powers prosecute crimes in Japan by the aid of a grand & petit jury.

In taking leave of this important subject I would respectfully refer you to my Nos 1124 and 1127 and also to my reply to Mr Kennedy, the British Chargé d'Affaires, a copy of which I had the honor to enclose in my No 1127.

Trusting that my action in the premises, as reported herein and in my other despatches above mentioned, may

may command your approval,

I have the honor to be,

Sir,

Your obedient servant,

Wm A. Bingham

No 1134.

Enclosure

Copy.

No 914.

United States Legation,
Tokei, June 14, 1880.

Thomas B. Van Buren Esq,
United States Consul General,
Kanagawa.

Sir:

Referring to your No 4641 of the 27th ultimo in relation to the case recently tried and determined before you, entitled the United States of America against John Martin Ross, an American seaman charged with the murder on the 9th ultimo, within the harbor of Yokohama and on board of the American merchantman "Bullion", of Robert Kelly, the 2d officer of said vessel, I have to say that having on the 22d ultimo approved the conviction of said Ross under Section 4102 —

Revised

Revised Statutes of the United States, in which conviction, as appeared by the record which you transmitted to me on the 20th ultimo, the four of associates who sat with you on the trial concurred with you, it is my opinion that I have no appellate jurisdiction to open and try the case on the appeal prayed for before you by Mr Hill, of counsel for the accused, and which, as shown by your despatch of the 21st ult., you disallowed.

I am, Sir,

Your obedient servant,

Sgd Jno. A. Bingham

Instructions transmitted for action by July 20. 80
Asst Quillen

Send copy of Dispatch to Cons. Act + call attention to absence of provision for building network stationing rec[illegible] on Japan
Copy to Committee on Foreign Affairs House of Reps
" " Senate
" July 14. 1881.

No 1135.

C.P. made



United States Legation,

Japan,

Tokei, June 18, 1880.

Mr Bingham

to the

How Secretary of State.

Subject.

The Agent of the lessor of the Legation premises assents to the confirmation of the lease for one years. Mr Bingham suggests that a telegram be sent to him if Congress passes an appropriation for building a Legation.

No 1135.

United States Legation,
Japan.
Tokei, June 18, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

Referring to my No 1130 of date the 15th instant in relation to the renewal of the lease for the United States Court House and Jail in Tokei, I beg leave to say that having notified Mr Fobes, the agent of the lessor, that you had approved the lease only for the current year ending the 15th of March next, that gentleman has answered by a letter dated the

16th

16th instant, in which he says "I beg
"to acknowledge the receipt of your
"(my) esteemed favor of the 15th instant
"referring to renewal of lease of property
"occupied by the United States Legation
"for the term of one year only from
"the 15th of March 1880, which I (he)
"hereby accept and confirm".

The letter which I wrote Mr Fabes, together with his answer as above, leaves no doubt that your Instruction No 505 dated April 29, 1880, has been expressly complied with and that the lease is thereby limited to the current year ending the 15th of March next, with privilege of renewal.

I beg leave to suggest again that, should Congress make the appropriation of $35,000.00 referred to in your Instruction, a telegram be sent me as follows:- "bill passed, Contract."

I have the honor to be, Sir, Your obedient servant,

Wm A. Farnham

Ans'd, sending the desired Spec. July 15. 1880. Mr Fish

No 1136.



Mr Elder

United States Legation,

Japan,

Tokei, June 18th, 1880.

Mr Bingham

to the

How Secretary of State.

Subject.

The Foreign Office requests another copy of the proposed international alphabet and system of general flag signals.

No 1136.

United States Legation,
Japan,
Tokei, June 18, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

I have been requested by the Foreign Office to supply it with another copy of the proposed International Alphabet and the proposed System of General Fog Signals which you transmitted to me with Instruction No 433, and have the honor to request that you will send me copies of those documents to be forwarded to His Imperial Japanese Majesty's

Government

Government.

I have the honor to be,

Sir,

Your obedient servant,

Jno. A. Bingham

Make requisition for Griffin to file. Ans'd Aug 4.

No 1137. Ans'd. will be sent by next mail steamer - Aug 5. Inst Exhibit



M Adee

United States Legation,

Japan,

Tokei, July 8, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

Requesting a supply of despatch paper, small envelopes &c.

No 1137.

United States Legation,
Japan.
Toku, July 8, 1880.

Hon William M. Evarts,
Secretary of State,
Washington, D.C.

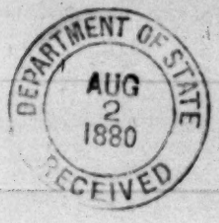
Sir:

I have the honor to request for the use of this Legation a supply of despatch and letter paper and small letter envelopes.

I have the honor to be,
Sir,
Your obedient servant,
M. A. Bingham

No 1138.

Mr Adee



United States Legation,

Japan,

Tokei, July 8, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

Mr S. R. Frazier, an American,
has been appointed by the
Japanese Government as an
instructor in the Osaka school.

No 1138.

United States Legation,
Japan,
Tokei, July 8, 1880.

Hon William M. Evarts,
Secretary of State,
Washington, D.C.

Sir:

I have the honor to acquaint you that upon my verbal recommendation Mr Samuel R. Fragier, a citizen of the United States, has been appointed by this Government as an instructor in a public school of the Empire in Osaka.

I have the honor to be Sir, Your obt. servant,

Wm. A. Reighman

3 copies to Navy Dept for Hyd. office. Aug 4.

1a 3 to Treasury. Aug 4.

1139. File one with this. Aug 4. Mr Cridler

Mr Adee

DEPARTMENT OF STATE
AUG 2 1880
RECEIVED

United States Legation,

Japan,

Tokei, July 8, 1880.

Mr Bingham

to the

How Secretary of State.

Subject.

Enclosing copies of notice as to the erection of a beacon at the entrance of the harbor of Nagasaki.

Enclosures.

Eight copies of the Notice.

Notice to Mariners.

No. 4 of the 13th Year of Meiji, (1880.)

HIRASE ROCK BEACON.

—:o:—

ENTRANCE TO NAGASAKI HARBOUR.

The Government of Japan hereby gives notice, that a Stone Beacon has been erected on the Rock called Hirase at the entrance to the harbour of Nagasaki, in the province of Hizen.

The Beacon is conical in shape, and is surmounted by a ball 3 feet in diameter, which is 20 feet above the base. It is painted with Red and White horizontal bands.

Iwosima lighthouse bears from it N. 82°15′ W., distant about one mile and one cable. The bearing is true.

The Rock covers about $2\frac{1}{2}$ feet at high water spring tides, and uncovers about 7 feet at low water.

YAMAO YOZO.

Minister of Public Works.

Tokei, July 1st, 1880.

No 1139.

United States Legation,
Japan,
Tokei, July 8, 1880.

Hon William M. Evarts,
Secretary of State,
Washington, D.C.

Sir:

I herewith I beg leave to enclose for your information eight copies of a notice to mariners issued on the 1st instant in relation to a stone beacon recently erected by the Government of Japan on the rock called Shirase at the entrance to the harbor of Nagasaki in the Province of

Higen

Hizen.

I have the honor to be,

Sir,

Your obedient servant

Jno. A. Bingham

No 1140. Mr Adee



United States Legation,
Japan,
Tokei, July 8th, 1880.

Mr Bingham
to the
How Secretary of State.

Subject.

Customs Report for May 1880. The value of imports in excess of that of exports yen 1,913,147 56. Duties levied yen 166,069 57. Specie exported yen 2,171,200 20; imported yen 1,943,409 13.

Enclosures.

Duplicate copies of the Customs Report for May 1880.

Bfs

No 1140.

United States Legation,
Japan,
Tokei, July 8, 1880.

Hon William M. Evarts,
Secretary of State,
Washington, D.C.

Sir:

For your information I have the honor to enclose duplicate copies of the "Monthly Return of His Imperial Majesty's Customs of Japan" for the month of May 1880."

The abstract (page 9) of imports and exports for the month shows that the total value of the former was yen 3,694,905 $\frac{26}{}$, and of the latter yen 1,791,757 $\frac{69}{}$, an excess

of

of imports over exports to the value of yen 1,913,147 56.

The import duties for the month amounted to yen 166,069 57, about five per cent ad valorem.

The export of specie and bullion for the month is valued at yen 2,171,200 20, and the value of the import thereof for the same period at yen 1,943,409 13.

I have the honor to be,

Sir,

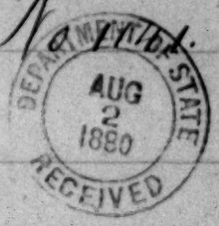
Your obedient servant,

Mo A. Bingham

File
One copy to Bureau of Statistics
One to Library

Ack & send to Mr. Scanlan
C. P.

No. 171 Desp.



Mr Adee &
Mr Scanlon

United States Legation,

Japan,

Tokei, July 9, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

Enclosing the Report of the Minister of Finance for the first eight fiscal periods, which gives a general statement of the finances of Japan from 1868 to 1875 and also explanatory and historical accounts of the formation of Departments and bureaus.

Enclosures

Duplicate copies of the Report.

(1 copy - Bureau of Statistics.)

No 1141.

United States Legation,
Japan,
Tokei, July 9, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

I herewith I have the honor to enclose duplicate copies of the very interesting report of His Excellency Mr Okuma, late Minister of Finance and at present Sangi & Imperial Councillor of His Majesty the Emperor of Japan.

The report gives the revenue and Expenditure of this Empire for the eight fiscal periods beginning with the first year of Meiji (1868) and

ending

ending with the sixth month of the eighth year of Meiji (June 1875).

A reference to table 1 pages 3-5 of the report will show that the total ordinary revenue for the eight periods was yen 282,870,871 $\frac{782}{1000}$; of this total it appears that the sum of yen 232,716,465 $\frac{476}{1000}$ was derived from land tax and the residue, amounting only to yen 50,154,406 in round numbers, was the revenue from all other sources. Thus it seems of the ordinary revenue of this Empire for the first eight years under the reign of the present Emperor more than four fifths was a land tax levied upon the producers of the Empire, while the entire revenue from Customs duties on exports and imports for

the

the whole period was but yen
8,497,665.84, but little more than
one million yen per annum.
The Minister remarks (page 5) that
"the land tax has continued to increase".

It will be observed that the
Extraordinary revenue for the eight
fiscal periods amounted to yen
123,479,981.534, making the grand
total of receipts for that time yen
406,350,853.516. The Extraordinary
revenue was derived from the issue
of Government paper money and
domestic and foreign loans.
The report with its appendix furnishes
valuable information of the fiscal
system and general organization
of this Government.

I have the honor to be,

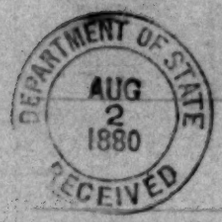
Sir.

Sir,

Your obedient servant,

Mc A Keyhem

Mr Adee &
Col. Morgan



United States Legation,

Japan,

Tokei, July 9, 1880.

Hon William M. Evarts,

Secretary of State,

Washington, D.C.

Sir:

I have the honor to hand you herewith statement of my account for the Quarter ended the 30th ultimo.

I have the honor to be,

Sir,

Your obedient servant

D. Wilmerding

Secretary of Legation

No 1142.

Mr Adee



United States Legation,

Japan,

Tokei, July 9, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

Acknowledging receipt of Instructions 506, 507, 508 and 509 with Mr Harris' commission as Vice Consul at Osaka.

No 1142.

United States Legation,
Japan,
Tokei, July 9, 1880.

Hon William M. Evarts,
Secretary of States,
Washington, D.C.

Sir:

I have the honor to acknowledge the receipt of your Instructions numbered 506, 507, 508 and 509 with its enclosure, the commission of Mr Harris as Vice Consul at Osaka. I shall at an early day obtain an Exequatur for Mr Harris and forward the same to him with his commission.

I have the honor to be, Sir, Your obedient servant,

Jno A Bingham

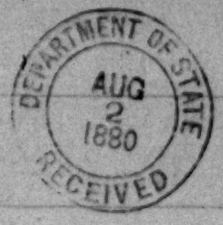
Papers transmitted with dispatch from Mr Brigham to Secretary of State dated Yokohama Aug 10. 80

Referred to Mr. O'Connor. C.P.

Mr O'Connor

Mr Adee

No 1143.



United States Legation,

Japan,

Tokei, July 9, 1880.

Mr Brigham

to the

Hon Secretary of State.

Subject.

The case of John Martin Ross, convicted of murder at Yokohama. The demand of the British officials that the accused be handed over to them for trial. Mr Brigham gives additional reasons why this demand should not be complied with. He reports the final judgment in the case, and the suspension of the execution of sentence.

No 1143.

United States Legation,
Japan,
Tokei, July 9. 1880.

How William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

Referring to my No 1134 of the 16th ultimo in relation to the case of the United States of America against John Martin Ross, an American seaman recently tried for the murder on board of the American merchant vessel "Bullion" when in the port of Yokohama of Robert Kelly, the 2d mate of that vessel, I beg leave to acquaint you that after my approval on the 22d

of

of May last of the conviction of said Ross, viz: on the 21st of June last, the Consul General pronounced in due form of law the sentence of death upon the said Ross, and that on the 23d ultimo I officially notified the Consul General that I postponed the Execution of the sentence under section 4103 of the Revised Statutes, being satisfied that the ends of public justice demand it.

I beg leave to call your attention to my several despatches heretofore transmitted to the Department in relation to this case and numbered, respectively 1124, 1127 and 1134.

In my No 1127 I especially called attention to the action of the British

Chargé

Chargé d'Affaires in Japan and the Consul of Great Britain at Yokohama in requesting the surrender by Mr Consul General Van Buren of the prisoner to be dealt with for the crime charged to have been committed by him on board of our merchant vessel when in the harbor of Yokohama.

Without repeating what I have already said on the subject of this request in my despatch No 1127 and also in my reply to this demand in my note to Mr Kennedy, the British Chargé d'Affaires, a copy of which was enclosed in my No 1127, I beg leave to say that Ross being at the time of the murder of Robert Kelly, the 2d mate of the

"Bullion"

"Bullion", an American seaman serving on board of said vessel, it is not to be questioned was then and there subject to American law, and did then and there in violation of American law murder the 2d mate of that vessel, and that the pretension of the British officials that in because of the alleged British nativity of Ross he cannot be held to answer to our tribunals in Japan for the criminal violation of our laws on board of our own merchant vessel when in the harbor of Yokohama, is supported in my opinion, neither by law, precedent nor reason. Under our existing treaties our merchant vessels in

Japanese

Japanese waters are as clearly and as absolutely American territory as under the law of nations they are American territory when on the high seas.

I suppose it to be a settled and generally accepted rule that one nation cannot execute the penal laws of another and that to this rule there is no exception save by virtue of a special treaty stipulation. There is no such treaty stipulation between the United States and Great Britain and no more color of right in that Government to execute our penal laws for violations thereof by American seamen on board of our own vessels when within the waters of Japan than

than there is authority in Great Britain to execute our penal laws for violations thereof by our seamen on board of our vessels when upon the high seas & within our own territorial waters.

As by section 5339 of the Revised Statutes it is declared that "Every "person who in any place & district "of country under the exclusive "jurisdiction of the United States "inflicts stabs, wounds &c upon any "other person whereof such other "person dies either on land & sea, "within & without the United States, "shall suffer death"; it greatly concerns the United States that this law of ours violated by Ross on board of our ship

when

whom within Japanese waters and
under "the Exclusive jurisdiction
"of the United States" by virtue of
our existing treaties with Japan, shall
be executed by our own tribunals.
Of the guilt of Ross as charged
I have no doubt; nor have I the
slightest doubt that the Act of
1860, under which Ross was tried,
convicted and sentenced, is con-
stitutional and ought to be main-
tained and enforced in this case
against this convicted criminal.

I have the honor to be,

Sir,

Your obedient servant,

M. A. Bingham

Telegram sent July 3

No 1144. Mr. Adee

United States Legation,

Japan,

Tokei, July 9, 1880.

DEPARTMENT OF STATE
AUG
2
1880
RECEIVED

Mr Bingham

to the

Hon Secretary of State.

Subject.

Transmitting draft of a treaty of commerce and navigation, draft of a treaty of friendship &c. prepared by the Japanese Government and sent to Mr Bingham today.

Enclosures.

1. Draft of a Treaty of Commerce and Navigation between Japan and

and

and the United States.

2. Draft of a Treaty of Friendship between the same and memorandum.

3. Annex 1 to the Treaty of Commerce and Navigation.

4. Observations Introductory and Explanatory on the Draft of Treaty of Friendship &c.

No 1144.

United States Legation,
Japan,
Tokei, July 9, 1880.

Hon William M. Evarts,
Secretary of State,
Washington, D.C.

Sir:

On the eve of the departure of our mail which closes this afternoon I have received from His Excellency Mr Inouye, the Japanese Minister for Foreign Affairs, a printed draft of a proposed Treaty of Friendship between Japan and the United States of America with a draft of a memorandum to be annexed thereto, copies of which I have the honor to enclose

and the United States.

2. Draft of a Treaty of Friendship between the same and memorandum.

3. Annex 1 to the Treaty of Commerce and Navigation.

4. Observations Introductory and Explanatory on the Draft of Treaty of Friendship &c.

No 1144.

United States Legation,
Japan,
Tokei, July 9, 1880.

Hon William M. Evarts,
Secretary of State,
Washington, D.C.

Sir:

On the eve of the departure of our mail which closes this afternoon I have received from His Excellency Mr Inouye, the Japanese Minister for Foreign Affairs, a printed draft of a proposed Treaty of Friendship between Japan and the United States of America with a draft of a memorandum to be annexed thereto, copies of which I have the honor to enclose

enclose; and also a printed draft of a proposed Treaty of Commerce and Navigation between Japan and the United States of America with annex 1 to the same, copies of which proposed Treaty and the annex thereto I also enclose.

I have no time before the delivery of the outgoing mail this evening to examine these proposed treaties &c. and therefore forward them without remark, further than this that I was not at any time consulted in relation thereto either by this Government or by any of my colleagues. Mr Inouye has verbally informed me today by his Secretary, Mr Shioda, that in a few days he desires an interview with

with me on the subject, and I have replied verbally that I will be pleased to hear anything he may have to say in regard thereto. The Minister also sent to me some written observations on the draft of the proposed Treaty of Friendship and the memorandum therewith, a copy of which observations I have the honor to enclose.

I have the honor to be,

Sir,

Your obedient Servant,

Wm. A. Pinkham.

No 11144

Enclosure.

DRAFT

TREATY OF FRIENDSHIP

BETWEEN

JAPAN AND THE UNITED STATES OF AMERICA,

AND

MEMORANDUM,

TO BE ANNEXED THERETO.

(TRANSLATION.)

See Memorandum No 11.

DRAFT

TREATY OF FRIENDSHIP

BETWEEN

JAPAN AND THE UNITED STATES OF AMERICA.

(TRANSLATION.)

DRAFT

TREATY OF FRIENDSHIP

BETWEEN

JAPAN AND THE UNITED STATES OF AMERICA.

His Majesty the Emperor of Japan and the United States of America, being desirous to maintain and strengthen the relations of friendship which happily subsist between their respective countries, subjects and citizens have resolved to proceed to a revision and improvement of the Treaties and Conventions subsisting between the respective countries, and have for that purpose named as Their Plenipotentiaries, that is to say:—

His Majesty the Emperor of Japan, _____ and the President of the United States, _____

_____

who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

Art. I.

There shall be perpetual peace and friendship between His Majesty the Emperor of Japan, His Heirs and Successors, and the United States, and between their respective countries, subjects and citizens.

Art. II.

His Majesty the Emperor of Japan may appoint a Diplomatic Agent to reside in Washington, and Consuls General, Consuls or Vice Consuls at any or all of the ports or cities of the United States.

The Diplomatic Agent of Japan shall have the right to travel freely to any part of the United States.

The Government of the United States may appoint a Diplomatic Agent to reside in Tokio, and Consuls General,

Consuls or Vice Consuls at any of the ports or cities of Japan which are opened for American Commerce by this Treaty, or may be subsequently so opened.

The Diplomatic Agent of the United States shall have the right to travel freely to any part of the Empire of Japan.

Art. III.

With reference to the privileges and concessions heretofore granted by His Majesty the Emperor of Japan to the Government of the United States and those granted to citizens of the United States in relation to residing for purposes of commerce, leasing ground, purchasing buildings and erecting dwellings, warehouses and places of worship, in certain ports and cities of Japan, and in relation to the right of freely going outside such ports and cities within certain limits and for certain purposes; It is hereby agreed and declared as follows:—

All Treaties, Conventions, Formal Agreements, Title Deeds, Deeds of Grant and all other solemn Acts and Deeds whatsoever, whereby any such privileges and concessions as are herein first referred to have been granted or made, are, to the extent to which the same are set out or specifically mentioned in the Table of conventions hereto annexed, and so far as is consistent with the terms of the present Treaty, (but not otherwise,) hereby continued and confirmed;

Where land has been granted for public purposes by Treaty or Convention conjointly to two or more Powers (the United States being one) such grant shall not henceforth have the effect of giving any foreign person or body any right of control over such land, the language of any such Treaty or Convention to the contrary notwithstanding;

But this provision shall not affect any grant of land made for such purposes to trustees.

Art. IV.

In view of the difficulties which have hitherto arisen or may hereafter arise

from the great differences in the laws and in the systems of legal procedure administered and observed in the courts of their respective dominions, the High Contracting Parties have agreed that, until the institution and administration in Japan of a system of law and legal procedure such as to render the following provisions unnecessary thereafter, the jurisdiction of the Japanese Courts in regard to the persons, property and rights of citizens of the Unites States resident or being in the open ports or cities, or lawfully being or residing elsewhere in Japan, shall be exercised subject to the provisions of this Treaty and of the Memorandum hereto annexed.

The said Memorandum shall be ratified by the High Contracting Parties; but subsequent modifications thereof, agreed upon between the respective Plenipotentiaries of the High Contracting Parties, may from time to time be effected by convention between the said Plenipotentiaries.

ART. V.

Any jurisdiction exercisable by Courts the United States and any right to sue therein in accordance with the provisions of this Treaty and of the Memorandum annexed hereto may be respectively exercised or availed of in Courts established by the Government of the United States in any of the ports or cities of the Empire of Japan now open.

ART. VI.

The two High Contracting Parties hereby agree that any favor, privilege or immunity whatever, which either High Contracting Party has actually granted, or may hereafter grant, to the Government, subjects or citizens of any other state, shall be extended to the Government, subjects or citizens of the other High Contracting Party, gratuitously, if the concession in favor of that other state shall have been gratuitous, or in return for an equivalent compensation or privilege if the concession shall have been conditonal.

ART. VII.

It is always understood that His Majesty the Emperor of Japan shall not be deemed to have made by any means any concession as to jurisdiction or otherwise other than those expressly made or confirmed by this Treaty and the Treaty of Commerce and Navigation of equal date herewith; and especially that, save where a contrary intention is evident and indisputable, the jurisdiction hereby conceded to the Government of the United States is judicial only.

Any authority whether legislative or executive heretofore exercised or claimed to be exercisable on behalf of the Government of the United States by their Diplomatic Agents or Consular officers whether in aid or substitution of Laws or Regulations of the Japanese Government shall henceforth be no more exercised or claimed to be exercisable;

Provided that nothing herein contained shall be held to deprive the Government of the United States of any such authority lawfully exercisable by them through their Diplomatic Agents or Consular officers or otherwise in respect of matters exclusively contemplated by Section I, of the Memorandum hereto annexed, so long as the same shall remain in force.

ART. VIII.

The present Treaty shall be ratified by His Majesty the Emperor of Japan, and by the President of the United States, by and with the advice and consent of the Senate thereof, and the ratifications shall be exchanged at ..... within ..... months from the date hereof.

When the present Treaty and the Treaty of Commerce and Navigation, which has been this day concluded between the two High Contracting Parties shall have been ratified and shall have come into operation, then these Treaties shall take effect to the exclusion of all preceding Treaties, Conventions and Agreements between Japan and the

United States, and of all stipulations contained therein of whatever description, save as in Article III, hereof provided, and save the conventions and other matters set out or specifically mentioned in the Table of conventions hereto annexed.

In witness whereof the respective Plenipotentiaries have signed the present Treaty and have affixed their respective seals.

Done at ....., the ..... of the ..... month of the ..... year of Meiji, corresponding to the ..... of 188 .

DRAFT

MEMORANDUM,

TO BE ANNEXED TO

THE TREATY OF FRIENDSHIP

BETWEEN

JAPAN AND THE UNITED STATES OF AMERICA.

(TRANSLATION.)

MEMORANDUM

RELATING TO

JURISDICTION

referred to in the Treaty of Friendship between His Majesty the Emperor of Japan and the United States of America, dated _____.

It is agreed and declared by and between the High Contracting Parties that the provisions of this Memorandum and any modifications thereof which may be hereafter effected in the manner provided by the Treaty above-mentioned are and shall be dependent upon and owing their validity solely to the stipulations of the above-mentioned Treaty.

SECTION I.

Sub-Section (1) All questions in regard to rights, whether of property or person arising exclusively among or between citizens of the United States shall be subject to the jurisdiction of the United States authorities only.

Sub-Section (2) All such questions arising between the Government or citizens of the United States and the Government, subjects or citizens of any nation other than Japan and the United States shall be, in like manner, subject to the jurisdiction of the United States authorities or the authorities of such other nation, as the case may be, according to the Treaties or arrangements existing between the United States and such other nation.

SECTION II.

Sub-Section (1) In all questions the subject of civil actions the parties to which are Japanese subjects and the citizens of the United States respectively, (saving the exceptions herein made,) the court of the party to be made defendant shall have exclusive jurisdiction; Provided that in any case where the party to be so made defendant is a citizens of the United States if there be no court competent to try

such action, established by the Government of the United States in Japan under the powers conferred in Article V, of the foregoing Treaty, then and in every such case the concession of jurisdiction made in this Sub-Section shall not have effect.

Sub-Section (2) In all that relates to the forms of remedies, the modes of proceeding and the execution of judgments, the law to be regarded shall be exclusively that of the court exercising jurisdiction in each case.

Sub-Section (3) Nothing herein above contained shall be held to deprive any court of jurisdiction to entertain, and adjudicate upon, any counter-claim otherwise maintainable by the rules of such court.

Sub-Section (4) Any provision hereof to the contrary notwithstanding, no court other than a Japanese Court, shall have any civil jurisdiction in matters concerning or arising out of any partnership entered into between Japanese subjects and citizens of the United States; and citizens of the United States members of any such partnership, so far as regards the partnership and the business thereof, shall, together with the whole of the partnership property, be subject to the exclusive jurisdiction of the Japanese Courts. But no such partnership shall be lawful which purports to deal with property in or over which, from its nature or situation, foreigners are debarred by Japanese Law from acquiring rights.

Section III.

Citizens of the United States charged with the commission, against Japanese subjects or against the subjects or citizens or the Government of any country other than Japan, of any act alleged to be a crime or offence, shall be tried by the Courts of the United States in Japan, and, if the act complained of constitutes a crime or offence by the law of the United States, shall upon conviction be punished by such courts and in accordance with the law of United States. If the act com-

plained of does not constitute a crime or offence by the law of the United States, the person charged shall not be punished by any court. Provided that if there is no court established by the Government of the United States in Japan or if such court has not jurisdiction to award the punishment (if any) imposed upon any such act by the law of the United States, then and in every such case, the concession of jurisdiction hereby made shall not take effect.

It is distinctly understood that no concessions made in this Memorandum, or in the foregoing Treaty, relating to the trial and punishment of citizens of the United States shall be held to include the power of arrest.

Section IV.

Nothing in the preceding Section or elsewhere contained shall operate to take away from the Japanese Courts jurisdiction to try summarily and to fine in a sum not exceeding two (2) Yen, any citizens of the United States guilty of any petty offence, so cognizable and punishable by Japanese law, committed against a Japanese subject.

Section V.

Citizens of the United States charged with the commission of any act, which, under or by virtue of any Japanese law, constitutes a crime, offence or penal act against the state (as contradistinguished from those committed against individuals, as such, or against any foreign state) including offences against any police or administrative regulation, whether general or local, or of any act constituting an offence under any Treaty or Convention for the time being in force between Japan and the United States, shall be tried and, if guilty, punished by the Courts of the United States whenever the maximum punishment for such a crime or offence imposed by the law of Japan or under such Treaty or Convention shall exceed three month's imprisonment and a fine of Five hundred (500) Yen, but not otherwise.

Provided, that if any such act by this Section made amenable to the jurisdiction of the Courts of the United States be not equally justiciable as such crime, offence or penal act by the said Courts of the United States in Japan and by them punishable to the same extent as a corresponding act would be punishable by a court within the territorial limits of the United States, then and in every such case the concession of jurisdiction herein above made shall not have effect;

Provided also that the said concession shall not in any case extend to any proceedings in respect of fines, penalties, forfeitures or confiscations under any Japanese Custom's Law or Regulation for the time being in force.

THE

TABLE OF CONVENTIONS

REFERRED TO

IN THE FOREGOING TREATY.

[This table is not yet completed]

本條約關係ノ約定書表

（此表未タ稿ヲ完フセス）

之ヲ處罰ス可シ但シ本款ニ因テ合衆國政府ノ裁判所ノ法權ニ歸シタル罪犯ト雖モ若シ前述在日本合衆國裁判所ニ於テ均シク之ヲ罪科犯罪又ハ有罪ノ所業タリトシテ審判スルコヲ得ス且合衆國ノ版圖內ノ裁判所ニ於テ之ト同樣ノ罪犯ヲ罰スルト同一ノ程限ニ從テ之ヲ處罰スルコヲ得サルトキハ本款ノ法權讓與ハ無效ノモノタル可シ且又各般ノ場合ニ於テ其時々行ハルヽ所ノ日本稅關ノ法律或ハ規則ニ從ヲ罰金贖金或ハ沒收品ヲ徵收スル事件ノ如キハ右讓與ノ限ニ在ラス

日本裁判所ハ前款又ハ其他ノ條件アリト雖モ夫カ爲メ日本法律ニ於テ即斷ヲ以テ受理處罰ス可キ小罪ヲ日本臣民ニ對シテ犯セル所ノ合衆國人民ニ即斷審判ヲ以テ二圓ニ超過セサル罰金ヲ課ス可キ法權ヲ失フコトナシ

第五款

合衆國人民ニシテ日本法律ニ於テ官府ニ對スル(各個人若クハ他國政府ニ對セサル)罪科、犯罪又ハ有罪ノ所業(全國或ハ一地方ニ關スル警察規則或ハ施政規則ニ對スル犯罪モ亦此中ニ含有ス)ト認ムル所ノ所爲若クハ其時々日本ト合衆國ノ間ニ履行スル條約或ハ約定書ニ於テ犯罪ト認ムル所ノ所爲アリト訴ヘラレ而シテ日本法律ニ照シ或ハ右條約若クハ約定書ニ依テ斯ル罪科或ハ犯罪ニ處スル刑罰ノ極度禁獄三箇月罰金五百圓ニ超過スルトキハ該件ハ合衆國政府ノ裁判所ニ於テ之ヲ審判ス可ク若シ有罪タラハ該裁判所ニ於テ

裁判所ニ於テ之ヲ審問シ而シテ若シ其告訴ニ係ル所ノ所爲ハ合衆國ノ法律ニ於テ罪科或ハ犯罪ト認ムルモノナルトキハ其有罪ニ決スル上該裁判所ニ於テ合衆國法律ニ從ヒ之ヲ處罰ス可シ若シ又其告訴ニ係ル所ノ所爲ハ合衆國ノ法律ニ於テ罪科或ハ犯罪ト認ムルモノニ非サルトキハ其被告人ハ何ノ裁判所ニテモ處罰セラルヽコトナカル可シ

但シ若シ日本ニ於テ合衆國政府ノ設立セル裁判所アラサルカ或ハ之アリトモ其裁判所ハ合衆國ノ法律ニ於テ該罪犯ニ擬スル所ノ處罰(若シ處罰ス可キモノナルトキハ)ヲ實行ス可キ法權ヲ有セサルトキハ本款ノ法權讓與ハ無効ノモノタル可シ

合衆國人民ヲ審問シ及ヒ處罰スルノ件ニ關シ此覺書又ハ本條約ニ依テ准許スル所ノ讓與中ニハ捕縛ノ權ヲ含有セサルコトヲ爰ニ明言ス

第四款

可キモノ)ヲ受理審判スヘキ法權ヲ失フコトナシ

(第四節) 日本臣民ト合衆國人民ノ間ニ取結ヒタル一切ノ會社ニ關係シ或ハ之ニ由テ起ル所ノ事件ニ就テハ日本裁判所ニ限リテ民事裁判ノ法權ヲ有ス可ク假令此覺書中之ニ反スル箇條アリ𪜈措テ問ハサル可シ且右ノ如キ會社及ヒ其社務ニ關スル事件ニ係ハリテハ其社員タル合衆國人並ニ該社ノ總財産ハ共ニ專ラ日本裁判所ノ法權ニ從フヲ要ス可シ但シ(其財產ノ性質或ハ所在ニ由リ)日本法律ニ於テ外國人ニ所有又ハ支配ノ權利ヲ許サヽル所ノ財產ヲ取扱フ可キ目的ニテ日本人ト合衆國人ノ間ニ取結ヒタル會社ハ總テ之ヲ法律ニ反クモノト爲ス可シ

第三款

合衆國人民ニシテ日本ノ臣民ニ對シ若クハ日本外ナル各國ノ人民或ハ政府ニ對シテ罪科或ハ犯罪タル可キ所爲アリト訴ヘラルヽ件ハ日本國內ナル合衆國ノ

約ニ從ヲ或ハ合衆國有司ノ法權ニ歸シ或ハ其他國ノ有司ノ法權ニ歸ス可シ

第二款

(第一節) 日本臣民ト合衆國人民ノ間ニ起ル所ノ民事訴訟ニ係ル諸論件ニ於テハ(本款ニ載スル例外ヲ除キ)獨リ被告方ノ管轄裁判所ノミ其法權ヲ有ス可シ但シ合衆國人民ノ民事訴訟ノ被告タル一切ノ場合ニ於テ若シ本條約第五條中ニ合衆國政府ニ附與シタル權力ニ據テ日本國內ニ設置スル所ノ裁判所ニシテ其訴訟ヲ審判スルニ相當シタルモノ有ラサルトキハ本節ノ法權讓與ハ無効ノモノタル可シ

(第二節) 凡テ仲理方法、訴訟法及ヒ判決實行方法ニ關スル所ノ諸事ハ專ラ本件ヲ審判スル裁判所ノ法律ニ從フ可シ

(第三節) 何レノ裁判所モ本款中上ニ揭クル所ノ諸條規ノ爲メニ一切ノ反訴(其裁判所ノ規則ニ因テ受理ス

……年……月……日日本國皇帝陛下ト米利堅合衆國ノ間ニ締結スル修好條約中ニ揭クル所ノ法權ニ關スル覺書

此覺書ノ諸款節並ニ前述ノ條約中ニ定メタル方法ヲ以テ後來此覺書ニ加フ可キ諸修正ハ總テ右條約ノ諸條規ニ係屬スルモノニシテ單ニ該諸條規ノ存スルカ爲メニ其効力ヲ有スルモノトス是レ兩締盟國ノ玆ニ契約明言スル所ナリ

第一款

(第一節) 凡ソ財產上若クハ身體上ノ權利ニ關シテ專ラ合衆國人民ノ中或ハ其間ニ起ル所ノ諸論件ハ獨リ合衆國有司ノ法權ニ歸ス可シ

(第二節) 凡ソ財產上若クハ身體上ノ權利ニ關シテ合衆國ノ政府若クハ人民ト他國(即チ日本及ヒ合衆國外ノ各國)ノ政府若クハ人民トノ間ニ起ル所ノ諸論件ハ亦均シク合衆國ト其他國トノ間ニ存スル條約又ハ契

日本及ヒ米利堅合衆國修好條約附錄覺書草案

議認許ヲ以テ)トノ批准ヲ經其日附ヨリ……
……箇月內ニ……ニ於テ互ニ其批准ヲ交
換ス可シ

此條約及ヒ同日ニ兩締盟國間ニ締結スル所ノ通商及
ヒ航海條約ヲ批准シテ之ヲ履行スル上ハ專ラ此諸條
約ヲ遵守シ是迄日本ト合衆國ノ間ニ交換シタル諸條
約、約定及ヒ契約書幷ニ其中ニ載スル諸約款ハ何等ヲ
論セス悉皆無効タル可シ但シ此條約ノ第三條ニ載ス
ル所並ニ此條約ニ附加セル約定書表ニ開列特記スル
所ノ諸約定及ヒ他ノ事項ハ此限ニ在ラス

右證據ノ爲メ雙方ノ全權大臣ハ此條約ニ署名シ各其
印ヲ捺スルモノナリ

明治…年…月…日　即チ千八百八十年
…月…日……ニ於テ

ノ譲與ヲモ爲サヽルモノト知ル可シ且殊ニ此條約ヲ以テ合衆國政府ニ譲與スル所ノ法權ハ單ニ裁判權ニ止マル者ト知ル可シ但シ之ニ反對スルノ意義明白ニシテ更ニ疑ヲ容レサルモノハ此限ニ在ラス

凡ソ立法權或ハ行政權ニシテ從前合衆國政府ノ爲メニ其公使又ハ領事官タル者ノ執行シ或ハ執行センコトヲ要求セシモノハ其日本政府ノ法律或ハ規則ヲ補助スル爲メナルト之ニ代ラシムル爲メナルトニ拘ハラス將來一切之ヲ執行ス可ラス又之ヲ執行センコトヲ要求ス可ラス但シ爰ニ掲示スル所ト雖モ此條約ニ附加セル覺書第一款中特別ニ定ムル所ノ事件ニ就キ其公使又ハ領事官等ヲシテ當然執行セシム可キ諸權ノ如キハ該款ノ存立スル間之ヲ合衆國政府ヨリ褫奪スルモノト視做ス可ラス

第八條

此條約ハ日本國皇帝陛下ト合衆國大統領(其上院ノ協

裁判所ニ於テ施行ス可キ一切ノ法樣幷ニ該裁判所ニ告訴スル一切ノ權利ハ日本帝國ノ現ニ開キタル諸港或ハ市府ニ於テ合衆國政府ノ設置シタル裁判所ニテ之ヲ施行利用スルヿヲ得可シ

第六條

凡ソ兩締盟國ノ一方ニ於テ現ニ別國ノ政府或ハ臣民ニ許與シ或ハ將來許與ス可キ殊遇特許或ハ恩免ハ他ノ一方ノ政府或ハ人民ニモ亦均シク之ヲ許與ス可シ尤モ之ヲ許與スルニ就キ別國ヨリ報酬ヲ求メサルトキハ他ノ一方ヨリモ報酬ヲ求ムルヿナク若シ又之ヲ許與スルニ別ニ附約アルモノハ則チ之ニ相應スル報酬或ハ特許ヲ求メテ之ヲ許與ス可シ是レ兩締盟國ノ玆ニ結約スル所ナリ

第七條

日本皇帝陛下ハ此條約及ヒ之ト同日附ノ通商及ヒ航海條約中ニ明記確定スル者ノ外決シテ法權其他何等

ニ載スル所ノ限ニ在ラス

第四條

兩締盟國各自所轄ノ裁判所ニ於テ施行遵奉スル法律及ヒ裁判法ノ甚タ殊異ナルカ爲メニ從來困難ヲ生セシニ由リ又將來困難ヲ生センコヲ慮リ茲ニ兩國相結約シ日本ニ於テ左ノ條々ヲ不用ナラシムルカ如キ法律及ヒ裁判法ヲ制定施行スルニ至ルマテハ開港及ヒ開市場ニ在住シ又ハ法律ニ適シテ日本國內開港開市外ニ在住スル合衆國人民ノ身體財產及ヒ權利ニ關シ日本裁判所ノ法權ハ此條約及ヒ之ニ附加セル覺書ノ諸條款ニ從テ施行スヘキモノトス

前述ノ覺書ハ兩締盟國ノ批准ヲ經可キモノナリ但シ兩後ノ修正ハ時々兩締盟國ノ全權大臣ノ間ニ協議ヲ爲シ雙方ノ同意ヲ以テ之ヲ加フルコトアル可シ

第五條

此條約及ヒ之ニ附加セル覺書ノ條款ニ從ヒ合衆國ノ

シテ従來日本皇帝陛下ヨリ合衆國政府ニ許與セル特許及ヒ讓與並ニ合衆國人民ニ許與セル特許及讓與ニ就テハ今此條約ニ依テ左ノ如ク契約明言スルモノナリ

前述ノ特許及ヒ讓與ヲ准許スル所ノ諸條約、約定書、契約、地券、給與狀及ヒ各般ノ公文、公書ノ中ニ就テ此條約ニ附加セル約定書表ニ開列特記スル所ニ係リ而シテ此條約ノ箇條ニ抵觸セサルタケハ(其他ハ然ラス)今茲ニ之ヲ保續固定スルモノナリ

凡ソ條約或ハ約定書ニ依テ公衆共用ノ爲メニ二箇國以上(合衆國共)一列ヘ給付シタル地所ノ如キハ自今以後外國人或ハ外國人ノ組合ヲシテ其地所ヲ支配スルノ權利ヲ有セシム可キ効ナキモノトス依テ右等ノ條約或ハ約定書ノ文義ノ本條ニ抵觸スルモノハ一切無効ノモノタル可シ

但シ公衆共用ノ爲メ保管者ニ給付シタル地所ハ本條

日本國皇帝陛下ハ公使ヲ派遣シ華盛頓ニ駐箚セシメ並ニ總領事、領事若クハ副領事ヲ派遣シ合衆國內何レノ港何レノ市府ニモ駐留セシムルヿヲ得可シ

日本公使ハ合衆國ノ版圖內何レノ地ヲ問ハス自由ニ旅行スルノ權利アル可シ

合衆國政府ハ公使ヲ派遣シ東京ニ駐劄セシメ並ニ此條約ニ依テ米利堅貿易ノ爲メニ開キタル又ハ後來其爲メニ開ク可キ日本ノ各港或ハ市府ニ總領事、領事或ハ副領事ヲ駐留セシムルヿヲ得可シ

合衆國公使ハ日本帝國內何ノ地ヲ問ハス自由ニ旅行スルノ權利アル可シ

第三條

日本ノ某港內及ヒ某市內ニ於テ商業ヲ營ム爲メニ住居シ地所ヲ賃借シ家屋ヲ購買シ及ヒ居家倉庫及ヒ禮拜所ヲ建營スル事ニ關シ並ニ此等ノ港市外某ノ規程內ニ於テ某ノ主意ノ爲メニ自由ニ出行スル權利ニ關

日本及ヒ米利堅合衆國修好條約草案

日本國皇帝陛下及ヒ米利堅合衆國ハ倶ニ雙方ノ國土人民ノ間ニ幸ニ存立スル所ノ親睦ノ交際ヲ維持擴充センコヲ冀ヒ兩國間ニ現存セル諸條約及ヒ約定書ヲ修正改良センコヲ決意シ之カ爲メニ

日本國皇帝陛下ハ……ヲ其全權大臣ニ任シ

合衆國大統領ハ……ヲ其全權大臣ニ任セリ而シテ此雙方ノ全權大臣ハ互ニ其委任狀ヲ示シ其良好妥當ナルヲ認メ左ノ諸條款ヲ協議決定スルモノナリ

第一條

日本國皇帝陛下及ヒ其儲嗣繼承者ト合衆國トノ間幷ニ雙方ノ國土人民ノ間ニ永遠不易ノ和好友誼ヲ存ス可シ

第二條

日本及ヒ米利堅合衆國修好條約草案

秘

第二號

日本及ヒ米利堅合衆國修好條約幷ニ附錄覺書草案　全

外務省
正本
印

No 11144

Enclosure.

Observations,

Introductory and Explanatory,

on the

Draft Treaty of Friendship,

and the

Annexed Memorandum,

relating to

Jurisdiction.

Draft

"Introductory and Explanatory observations on Draft Treaty of Friendship and annexed Memo: relating to Jurisdiction."

Although Foreign Representatives and their Governments have been made acquainted with the general objects and scope of the proposals to be made by this Government for the revision of the arrangements relating to jurisdiction, and other kindred matters; it is nevertheless not undesirable that, in submitting the Drafts, wherein these proposals are embodied in a concrete form, this Government should state again somewhat more fully and particularly both the grounds and the precise bearing of the modifications which it seeks to introduce by the new Treaties.

At the outset it is desired to impress upon Foreign Representatives and their Governments that it is upon

the basis of no sentimental grievance, nor of any pedantic insistance upon exact legal rights, that this Government rests the policy which dictates the present proposals; but upon the basis of practical necessity: and, though other considerations no doubt enter into the question and must affect its discussion, it is always to be borne in mind that such are, secondary only and subsidiary to the practical foundation of the proposals made.

It is not open to question that the present arrangements, not only greatly cripple the means of good administration at the disposal of this Government, but also interfere seriously with the harmonious relations of this Government and people with the Representatives and people of other nations whilst in this country; and in removing the practical difficulties which the existing system entails upon itself, this Government trusts to remove at the same time many of the obstacles

to fuller and more harmonious foreign intercourse.

In the proposed modifications of the arrangements relating to jurisdiction there are two principal objects kept in view, which may be shortly stated thus:—

(1) The recovery by this Government of the actual power of exercising its authority other than judicial, over all persons in Japan in <u>all</u> matters.

(2) The recovery of the actual power of exercing its authority, judicial included, over all persons in Japan, so far as relates to police and administrative matters and offences arising out of them.

Now, without desiring to enter here into any argument on the subject, it should be stated that, in the opinion of this Government, there are very important discrepancies between the existing practice in these respects and the language of

the Treaties: and that it is not unlikely that much of the present difficulty has arisen from the attempt to carry out a system never contemplated by the framers of the Treaty.

It may readily be admitted that, for some time after the first Treaties were made, it was really necessary, owing to the condition of the country at that time, for foreign powers to actually exercise more authority than was strictly theirs by the terms in which the concessions of the Treaties were made. But the time has passed when such a course can be justified by necessity: and this Government now seeks to reassert its right to exercise some portion, but not all, of the rights and authority not actually taken away by Treaty; and further, on grounds of practical necessity, to claim the retro-cession of a <u>very small</u> portion of the rights really given up by former Treaties.

The first of the rights of which it is sought merely to re-assert

the actual exercise, without involving any new demand, is the right to exercise executive authority over foreign residents in all matters. In this respect generally no judicial authority is claimed: it is admitted that this had been really given up by Treaty as regards all private offences, and it is not (with the trifling exception to be hereafter mentioned) sought now to regain it. What is sought is the recognition of the full executive authority of this Government in all respects

The second point is the recognition of the authority of this Government, legislative, executive and judicial, in all that affects the public administration of affairs— the government of the country and of all persons residing in it.

The assumption (not warranted by the Treaties) of an immunity from administrative and police regulations enjoyed by foreigners in Japan is at the bottom of all the troubles, difficulties and disputes that have arisen.

The main features of the previous troubles in this connection are too well known to all those to whom these observations are addressed to need recapitulation. It is sufficient here only to allude to them; and at the same time to point out that the nature of the trouble is different in different cases. If Japanese regulations are to have no binding effect on foreign residents it behoves the foreign powers take steps to meet the required ends (the peace, safety and good government of all persons living in the same place) by some means of their own. But this is precisely what is not done. Some powers provide no such means, others imperfect ones only, and others again use means which unwarrantably interfere with the internal administrative action of this Government. Hence the present difficulties and frequent deadlocks. If this Government had to deal with <u>one</u> other Government only, an arrangement might easily be come to:

but it has to deal with so many, all differing in their laws, and in the constitutional powers exercised by their representatives, Diplomatic and consular, in this country. It is impossible therefore for them all to adopt an uniform system: while, on the other hand, the existence of 15 or 16 different administrative systems, side by side, is obviously too glaring an inconvenience to be depended. The only means to secure the application of administrative and police regulations of some kind to all persons, and to secure uniformity, both administratively and judicially, is by the means proposed here, viz:— the recognition that all authority in these matters resides in the Government of this country. And it would not be enough to recognize the legislative and executive authority only of this Government, placing the judicial power, in these as in other matters, in foreign hands: for it is in the judicial, as much as in the other branches, that

the powers of the foreign authorities are defective: and the reason of this lies in the distinction between all private offences and the graver sort of public offences on the one hand, and the lower kind of public offences on the other — the distinction, namely, that the former class are cognizable by the general laws administered in the various consular courts established in this country; whilst, as to the latter class, these courts are necessarily without jurisdiction, and without any law capable of being administered to meet the cases. But whilst reasserting, as a legal right, its authority, legislative executive and judicial, in public matters, this Government has confined itself in the proposals made in the accompanying Draft, to demanding for the present the actual exercise of that authority, generally speaking, only in the lower class of cases, out of which practical difficulties have owing to the causes just pointed out, hitherto

been found to arise.

Except in the single instance of Customs Regulations, in which it is intended that the authority of the Government should be left altogether untouched, a limit has been proposed, above which judicial authority may still be exercised by those foreign courts which have the means of dealing with such offences; but below which the rights of the territorial courts are not given up. There will doubtless be some offences thus coming to be dealt with by the territorial courts, as falling below the limit, with which the Consular Courts also might have found themselves competent to deal: but it is thought better to draw one broad, obvious and perfectly simple line of demarcation, and not to invite conflicts of jurisdiction by making cross-divisions.

The trifling point in which the retro-cession of a right confessedly given up by the former Treaties is here sought, is the following.

It is proposed that the territorial courts should have the right to adjudicate summarily upon, and punish by a trifling fine, petty offences brought before them by Japanese subjects against foreign subjects. The difficulties delays and inconveniences attending the present system, under which such easy and summary methods are wanting, are so great as to entail a practical denial of justice in these matters.

Such are the main features of the proposals and of the grounds on which they are made. In the preparation of the Documents by which it is proposed to give effect to these proposals two principal aims have been kept in view, viz:—

(1) To make practicable provisions for the future.

(2) To <u>express</u> and <u>define</u> these provisions, so as to render impossible any wide and fundamental differences such as exist at present between

the view taken by this Government of the legal effect of former concessions, and the view on which is based the system actually put into practice.

As to the provisions proposed, the principal ones have been already indicated.

As to the second point — full and definite expression — it is believed that the brevity, looseness and disregard of technical considerations, observable in the drafting of the former Treaties are responsible in a great measure for the illogical and impracticable views and customs which have resulted. In the present Draft therefore it is attempted to express comprehensively and at the same time definitely all that it is desired to say.

The general scheme of the provisions relating to jurisdiction is based upon the axiomatic principle that naturally, and in the absence of concessions made, all jurisdiction whatsoever

within the territory of Japan rests in the sovereign authority of this country.

From this it follows that, on the one hand, any right of jurisdiction to be exercised in Japan by another power must be positively granted; and on the other hand, that, all that is not so granted remains in the national sovereignty, and is indisputably exercisable by the territorial courts without any Treaty provision to that effect. So, all the provisions in the Drafts relating to the exercise of jurisdiction in this country by foreign authorities will be found <u>positively</u> expressed, whilst those relating to the exercise of jurisdiction by Japanese authorities are <u>negative</u> (or, more strictly, "privative") in form. It is extremely necessary to hold this circumstance and the reason of it clearly and constantly in mind in perusing these Drafts: otherwise the clauses will appear disjointed and defective. But, if this principle be borne in mind, the provisions made will, it is

believed, be found logically complete.

In pursuance of this method, it is provided by Article IV. of the Draft Treaty, that the jurisdiction of the Japanese Courts over (to speak broadly) foreign residents shall be exercised <u>subject to</u> the provisions of the Treaty and the annexed Memorandum which deals exclusively with matters of jurisdiction.

That is the first step. Then, as the subsequent provisions not only take away jurisdiction in certain cases from the Japanese Courts, but also permit the jurisdiction so taken away to be exercised by foreign Courts, it becomes necessary to accord permission to the foreign Sovereign Power to provide for the exercise of that jurisdiction by means of Courts <u>established in Japan</u>; otherwise there would be no Court, in this country having jurisdiction in matters over which Japanese jurisdiction had been surrendered.

This is the second step, and it is effected by Article V. of the Treaty.

similarly, if the privilege of establishing such courts were not availed of by any given nation, or if, though courts were established, they should prove to be endowed with defective power of exercising the jurisdiction surrendered to them, the same result would ensue, viz:- that cases might occur which there would be no court capable of entertaining. It would be improper therefore to surrender the Japanese right of jurisdiction <u>absolutely</u>: so, jurisdiction is conceded conditionally upon the existence of a foreign court of sufficient competency, in cases where Japanese interests would otherwise be imperilled: where no Japanese interests are concerned, the jurisdiction is surrendered absolutely.

Besides these matters relating solely to jurisdiction, there are one or two other points which may here be briefly alluded to.

The Third article of the Treaty confirms previous Treaties conventions &c.

as to matters of the nature referred to in the opening sentence of the Article, so far as specified in a Table which it is intended to frame and ultimately to annex to the Treaty. The concessions and other matters which it it necessary thus to keep alive are principally (but not exclusively) those relating to land.

The remaining provisions of this Article relate exclusively to land, and their object is this:— Whereas land has been set apart, by various conventions between this Government and the Treaty Powers conjointly, for sundry public purposes common to all, such as recreation ground &c; and certain persons or bodies, such as Consuls or Consular Boards, have been invested with some measure of control over such lands in conjunction with the Local authorities; and such arrangements have proved eminently unsatisfactory: it is here proposed to withdraw all control from such foreign

bodies and leave it exclusively in the hands of the Japanese authorities. By the operation of the previous paragraph whereby all such grants are confirmed, the continued devotion of such land to its original purposes is nevertheless ensured.

The concluding paragraph is intended to permit the continuance of foreign control over certain lots of land, such as cemeteries for instance, which are vested wholly in foreign trustees: the proposed withdrawal of foreign control in other cases is not to affect these rights.

Provisions such as those contained in Article VII. have been thought desirable; as an explicit statement on these points agreed to on both sides is calculated to remove many causes of misunderstanding and dispute in future.

The above remarks may fittingly close these observations; for the removal of such causes has

been the aim continually kept in view in preparing the documents upon which these observations are offered.

No 11441

Enclosure.

DRAFT OF A TREATY

OF

COMMERCE AND NAVIGATION

BETWEEN

JAPAN AND THE UNITED STATES OF AMERICA.

(TRANSLATION.)

DRAFT OF A TREATY
OF
COMMERCE AND NAVIGATION
BETWEEN
JAPAN AND THE UNITED STATES OF AMERICA.

His Majesty the Emperor of Japan, and the United States of America, being desirous further to promote the commercial intercourse between their respective subjects and citizens, have deemed it expedient to conclude a Treaty of Commerce and Navigation, and have for that purpose named as their respective Plenipotentiaries, that is to say:

His Majesty the Emperor of Japan,

.....;

And the President of the United States,

:

Who, after having communicated to each other their full powers, found to be in good and due form, have agreed upon and concluded the following articles:

Article I.

The subjects and citizens of each of the two High Contracting Parties shall have liberty freely and securely to come, with their ships and cargoes to all places, ports, and rivers in the territories of the other, where trade with other nations is permitted; they may remain and reside in any such places, and there hire and occupy houses and warehouses, and may there trade, by wholesale or retail, in all kinds of produce, manufactures, and merchandise of lawful commerce.

In like manner the ships of war of each High Contracting Party, shall have liberty to enter into all harbors, rivers, and places within the territories of the other, to which the ships of war of other nations are, or may be, permitted to come, to anchor there, and to remain and refit; subject always to the local regulations of the two countries, respectively, so far as applicable to foreign ships of war.

The stipulations of this Article do not apply to the coasting trade which each High Contracting Party reserves to itself, and shall regulate according to its own laws.

ARTICLE II.

The two High Contracting Parties hereby agree that any favor, privilege, or immunity whatever in matters of commerce or navigation, which either High Contracting Party has actually granted, or may hereafter grant, to the subjects or citizens of any other state, shall be extended to the subjects or citizens of the other High Contracting Party, gratuitously, if the concession in favor of that other state, shall have been gratuitous; and on the same or equivalent conditions, if the concession shall have been conditional.

ARTICLE III.

No other or higher duties or charges on account of tonnage, light, or harbor dues, pilotage, quarantine, salvage in case of damage or shipwreck, or any other local charges, shall be imposed in any of the ports of His Imperial Majesty's territories on vessels of the United States, than those payable in the like cases in the same ports by Japanese vessels; nor in the ports of the United States, on Japanese vessels, than shall be payable in the like cases in the same ports on vessels of the United States.

ARTICLE IV.

No other or higher duties shall be imposed on the importation into the United States, of any article the growth, produce, or manufacture of His Imperial Majesty's territories, and no other or higher duties shall be imposed on the importation into the dominions of His Imperial Majesty, of any article the growth, produce, or manufacture of the United States, than are, or shall be payable, on the like article, being the growth, produce, or manufacture of any other foreign country. Nor shall any other or higher duties or charges be imposed in the dominions or territories of either

of the two High Contracting Parties on the exportation of any article to the dominions or territories of the other, than such as are, or may be, payable on the exportation of the like article to any other foreign country. No prohibition shall be imposed upon the importation of any article the growth, produce, or manufacture of the territories of either of the two High Contracting Parties into the dominions or territories of the other, which shall not equally extend to the importation of the like article being the growth, produce, or manufacture of any other country. Nor shall any prohibition be imposed upon the exportation of any article from the territories of either of the two High Contracting Parties to the dominions or territories of the other, which shall not equally extend to the exportation of the like article to the territories of all other nations.

Article V.

The same duties shall be paid on the importation of any article which is, or may be, legally importable into the dominions of His Imperial Majesty, whether such importation shall be in Japanese vessels or in vessels of the United States; and the same duties shall be paid on the importation of any article which is, or may be, legally importable into the United States, whether such importation shall be in vessels of the United States or in Japanese vessels. The same duties shall be paid, and the same drawbacks allowed, on the exportation of any article which is, or may be, legally exportable from His Imperial Majesty's dominions, whether such exportation shall be in Japanese vessels or in vessels of the United States; and the same duties shall be paid, and the same drawbacks allowed, on the exportation of any article which is, or may be, legally exportable from the United States, whether such exportation be in vessels of the United States or in Japanese vessels.

Article VI.

In whatever relates to the police of the ports, the lading and unlading of ships,

the warehousing and safety of merchandise, goods and effects, the subjects and citizens of each High Contracting Party shall enjoy, in the territories of the other, the same privileges, liberties and rights, as native, subjects or citizens; and they shall not be charged, in any of these respects, with any other or higher imposts or duties, than those which are, or may be, paid by native subjects or citizens.

Article VII.

It shall be free for each of the two High Contracting Parties to appoint Consuls-General, Consuls, Vice Consuls, and Consular Agents, for the convenience of trade, to reside in the territories of the other Party; but before any Consul-General, Consul, Vice Consul, or Consular Agent shall act as such, he shall, in the usual form, be approved and admitted by the Government to which he is sent. These several consular officers of each of the two High Contracting Parties shall enjoy in the dominions or jurisdiction of the other, whatever privileges, exemptions and immunities are or shall be granted there to consular officers of corresponding rank belonging to the most favored nation.

Article VIII.

If any ship of war or merchant vessel of either of the two High Contracting Parties should run aground or be wrecked upon the coasts of the other, such ship or vessel, and all parts thereof, and all furniture and appurtenances belonging thereunto, and all goods and merchandise saved therefrom, including any which may have been cast into the sea, or the proceeds thereof if sold, as well as all papers found on board such stranded or wrecked ship or vessel, shall be given up to the owners or their agents when lawfully claimed by them. If there are no such owners or agents on the spot, then the same shall be delivered to the consular officer of Japan or of the United States (as the case may be) in whose district such wreck or stranding may have

taken place, upon being claimed by him within the period fixed by the laws of the country; and such consular officer, owners, or agents, shall pay only the expenses properly incurred in the preservation of the property, together with the salvage or other expenses, which would have been payable in the like case in respect of a national vessel.

The goods and merchandise saved from the wreck shall be exempt from all customs duties, unless cleared for consumption, in which case they shall pay the same rate of duty as if they had been imported in the ordinary manner.

Article IX.

It is agreed between the two High Contracting Parties that, from next, if the ratifications of the present Treaty of commerce and navigation shall have been exchanged before that date, and if not, from the date of such ratifications being exchanged, the duties specified in Annex I to the present Treaty may be levied on goods enumerated therein, the growth, produce, or manufacture of the United States on importation into Japan. On goods not enumerated therein the duties shall be levied by the general Tariff of the Japanese Customs which shall be so regulated that the maximum of these duties shall not exceed thirty per cent. (30%) of the value of the goods at the place of production or fabrication with the addition defined in Art. X.

Article X.

Any import duty levied ad valorem in the territories of His Imperial Majesty shall be calculated on the value at the place of production or fabrication of the object imported, with the addition of the cost of transport, insurance, and commission for importation into Japan, as far as the port of discharge.

For the levying of these duties, the importer shall make a written declaration at the Custom House, stating the value and description of the goods imported, with the addition aforesaid. If the Custom House authorities shall be of

opinion that the declared value is insufficient, they shall cause the goods to be appraised by the Custom House appraisers, whose return as to the value thereof shall be final and conclusive, unless the importer requests a re-appraisement within twenty four hours.

Article XI.

If the importer shall have requested a re-appraisement as aforesaid, he may himself appoint appraisers for the purpose of such re-appraisement; should, however, the Custom House authorities be unwilling to accept the value thus determined, they shall be at liberty to take the goods on paying the importer the price determined by such re-appraisement, together with a commission of five per cent. (5%) on such value.

Article XII.

No addition, establishment, or re-establishment of the export duty on any article within the territories of His Imperial Majesty, shall take effect until six months after such addition, establishment or re-establishment has been publicly notified.

Article XIII.

If one of the two High Contracting Parties shall establish any excise tax or inland duty, or augment existing excise taxes or inland duties upon any article of home production or manufacture, an equivalent compensatory duty may be imposed on articles of the same description on their importation from the territories of the other, provided that the said equivalent duty is levied on the like articles on their importation from all other foreign countries.

Article XIV.

Until such time as the annual sum known as "ground-rent" payable to the Government of His Imperial Majesty by

citizens of the United States, in respect of the tenure of land in the ports or other places wherein the subjects or citizens of foreign powers having Treaties with Japan are permitted to lease land in perpetuity from the said Government, shall be reduced in rate to the amount for the time being annually payable to the said Government by native subjects in respect of the ownership of land in or about the same several localities, citizens of the United States shall be exempted from payment of all local taxes, and from all direct taxes, Imperial as well as local, imposed upon land or house property; saving any charges or imposts payable in respect of the actual use or enjoyment of any specific thing, right or privilege provided or granted by or at the expense of any office or authority, whether Imperial or local, of the said Government.

Citizens of the United States resident in Japan shall not be exempted from any taxation (other than those above mentioned) imposed alike upon Japanese subjects and resident aliens, whether personally or in respect of property, manufacturing industry, professional calling, or otherwise.

Article XV.

Citizens of the United States residing in the dominions of His Imperial Majesty, and the subjects of His Imperial Majesty residing in the United States, shall be exempted from all compulsory military service whatsoever, whether by sea or land, and from all forced loans, or military exactions or requisitions.

Article XVI.

All merchandise purchased or sold, or contracted to be purchased or sold by citizens of the United States in any place in Japan not open for foreign trade shall be liable to seizure and subsequent confiscation. Moreover, in the case of any ship of the United States entering, for purposes of trade, a port of Japan not open to foreign trade, a penalty of one thousand (1000) yen may be levied upon such ship; and all goods landed, shipped or trans-shipped, or attempted

to be landed, shipped or trans-shipped, together with all boats and other means of transporting the same, shall be liable to seizure and subsequent confiscation.

ARTICLE XVII.

Citizens of the United States going beyond the limits fixed by Treaty without the special and express permission of the competent Japanese authorities, or infringing or neglecting any of the conditions or restrictions under which such permission may have been accorded, may be immediately sent back by the local authorities, under restraint if necessary, to the nearest point within the said limits, and shall be deemed to have committed an offence under this Treaty, and be liable, upon conviction, to a penalty not exceeding one hundred (100) yen for each such offence; and upon a second or further conviction the penalty may be increased to two hundred and fifty (250) yen.

ARTICLE XVIII.

The proceeds of all fines and penalties levied and all goods forfeited or confiscated by or upon the complaint of any Department or officer of the Government of His Imperial Majesty, in whatever court or by whatever process the same may have been recovered or made, belong to, and shall be paid to, the Government of His Imperial Majesty.

ARTICLE XIX.

The present Treaty of commerce and navigation shall remain in force for ten years from the date of the exchange of the ratifications, and further until the expiration of twelve months after either of the two High Contracting Parties shall have given notice to the other of its intention to terminate the same; each of the two High Contracting Parties being at liberty to give such notice to the other at the expiration of the first nine years, or at any time afterward.

The two High Contracting Parties reserve to themselves the right to in-

troduce into the present Treaty by common consent any modification, the utility of which may be shown by experience.

Article XX.

The present Treaty shall be ratified, and the ratifications shall be exchanged at_____ within_____ months from the date hereof.

When the present Treaty shall have been ratified and shall have come into operation, then this Treaty shall take effect to the exclusion of all preceding Treaties, Conventions and Agreements between Japan and the United States relating to commerce and navigation and of all stipulations contained therein, save as is provided by the Treaty of Friendship between the two High Cotracting Parties of equal date herewith.

In witness whereof the respective plenipotentiaries have signed the present Treaty of commerce and navigation and have affixed thereto their respective seals.

Done at_____, the_____ day of the _____ month of the_____ year of Meiji, corresponding to the_____ day of_____, A.D. 188_ .

ヲ遵奉シ從前通商及ヒ航海ニ關シテ日本ト合衆國ノ間ニ結ヒタル條約、約定書及ヒ契約書ハ一切之ヲ廢止ス可シ但此條約ト同日ニ締盟兩國ノ間ニ締結セル修好條約中ニ記載スル所ノモノハ此限ニ在ラス

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ヲ該政府ニ納メシムル可シ

第十九條

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第二十條

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一合衆國人民ニシテ其筋ノ日本官吏ヨリ受ケタル特別ノ免許狀ヲ所持セスシテ條約規程外ニ出行スルカ又ハ其免許狀ノ箇條或ハ制限ニ違背シ或ハ之ヲ忽諸スルニ於テハ地方官吏ハ直ニ之ヲ其規程内ナル最寄ノ地ニ送還シ又止ムヲ得サル場合ニ於テハ之ヲ警護シテ其地ニ送還シ此ノ如キモノハ此條約ニ對シテ罪ヲ犯セル者ト視做シ其犯罪ニ決スルニ於テハ每犯百圓ニ超過セサル罰金ヲ課シ及ヒ其再犯以上ニ及フモノハ二百五十圓マテノ罰金ヲ課ス可シ

第十八條

一凡ソ罰金贖金及ヒ沒收品ニシテ日本皇帝陛下政府ノ官衙或ハ官吏ノ徵收スル所ニ係リ又ハ其官衙或ハ官吏ノ告訴ニ由テ徵收スル所ニ係ルモノハ其何ノ裁判所ニ於テ何ノ手續ヲ以テ徵收シタルヲ問ハス總テ日本皇帝陛下ノ政府ニ屬スルモノトシテ之

一日本皇帝所領内ニ在留スル合衆國人民並ニ合衆國内ニ在留スル日本人民ハ總テ強募ノ海陸兵役及ヒ強募ノ公債或ハ軍用課金ヲ免除セラルル可シ

第十六條

一合衆國人民ニシテ日本國内外國通商ノ爲メニ開カサル場所ニ於テ商品ヲ購買或ハ販賣シ若クハ其購買或ハ販賣ヲ契約スル者アレハ總テ其商品ヲ収押ヘ從テ之ヲ沒收ス可シ

又合衆國ノ船舶ニシテ外國通商ノ爲メニ開カサル日本ノ海港ヘ通商ノ爲メニ入來ルコアル時ハ其船舶ニ對シテ一千圓ノ罰金ヲ課ス可シ且其陸揚船積或ハ船移ヲ爲シ又ハ陸揚船積或ハ船移ヲ爲サントセシ所ノ商品並ニ該商品ノ輸送ニ用ヒタル諸端船及ヒ其他ノ物件ハ尽ク之ヲ収押ヘ從テ之ヲ沒收ス可シ

第十七條

カ爲メニ合衆國人民ヨリ日本政府ニ納ムル所ノ所謂借地料ナル者ノ年額ヲ減少シテ日本人同開港市内又ハ其近傍ニ土地ヲ所有スルカ爲ニ同政府ニ納ムル所ノ年額ニ均一ナラシムル迄ハ合衆國人民ハ各種ノ地方稅並ニ地所及ヒ家屋ニ賦課ス可キ各種直稅(國稅ト地方稅トヲ問ハス)ヲ免ス可シ但シ日本政府ノ中央官衙若クハ地方官衙ヨリ其官衙ノ費用ヲ以テ給與若クハ許與シタル物件權理若クハ特許ヲ現ニ使用若クハ享有スルカ爲ニ納ム可キ一切ノ賦課金ハ右特免ノ例ニ在ラス

一凡ソ日本人民ト日本在住外國人トニ均シク賦課ス可キ各般ノ租稅(前項ニ揭クル者ノ外)ハ其身上ニ賦課シ或ハ工業職業或ハ其他ノ事項ニ賦課スルニ論ナク在日本合衆國人民ト雖モ之ヲ免カルヽヲ得ザル可シ

第十五條

以テ該品ヲ輸入人ヨリ買上ルコト自由タル可シ

第十二條

一日本皇帝所領内ニ於テ輸出稅ヲ增加新設又ハ再設スルニハ其公告ノ日ヨリ六ケ月ノ後ニ非サレハ効力ヲ有セサルモノトス

第十三條

一締盟兩國ノ一方ニ於テ内國産生或ハ製造物品ヘ新ニ製産稅又ハ内國稅ヲ課スル時或ハ現行ノ製産稅或ハ内國稅ヲ增課スルコトアル時ハ他ノ一方ノ版圖内ヨリ同種物品ヲ輸入スルニモ亦之ニ平均賠償ス可キ稅ヲ賦課スルヲ得可シ但シ斯ル場合ニ於テハ他ノ諸國ヨリ輸入スル同種物品ニモ右同樣ノ稅ヲ賦課スルモノトス

第十四條

一日本皇帝陛下ノ政府ニ於テ締盟各國ノ人民ニ無期ノ借地ヲ許可シタル各開港市内ニ土地ヲ借有スル

一日本皇帝ノ所領内ニ輸入スル物品ノ従價稅ハ該品ノ産出地或ハ製造地ノ價格ニ日本國内該品陸揚港マテノ運送賃保險料及ヒ口錢ヲ加ヘ其總額ニ對シテ計算ス可シ

一右従價稅徵收ノ爲メ輸入人ハ輸入品ノ原價並ニ品名及ヒ前項ノ諸費額ヲ記載シタル告書ヲ稅關ニ差出ス可シ若シ稅關官吏ニテ右申告ノ價格ヲ不十分ナリト思惟スルトキハ稅關鑑定役ヲシテ其價格ヲ鑑定セシム可シ而シテ輸入人若シ二十四時内ニ其再鑑定ヲ請求セサルトキハ此價額鑑定ヲ以テ終結定着ノ者ト爲ス可シ

第十一條

一輸入人若シ前條ノ如ク再鑑定ヲ請求スルトキハ其再鑑定ノ爲メ自カラ評價人ヲ選定シ更ニ評價セシムルコヲ得然レ𪜈稅關官吏ニ於テ其評價ヲ承諾スルコヲ欲セサルトキハ其評價ニ百分ノ五ノ口錢ヲ加ヘ

一難破船ノ荷物及ヒ商品ハ一切關稅ヲ免除ス可シ然レ𪜈若シ消費ノ爲メ之ヲ荷捌キスル𪜈ハ尋常ノ手續ヲ以テ該品ヲ輸入シタルト同樣ノ稅額ヲ納メシム可シ

第九條

一締盟兩國ハ左ノ如ク約定セリ若シ來ル……日前ニ此通商及ヒ航海條約ノ批准ヲ交換スルヲ得ハ右……日ヨリ若シ又該日限前ニ交換シ得サル𪜈ハ右ノ批准交換ノ日ヨリ爾後日本國ニ輸入スル合衆國內ノ產生或ハ製造ノ物品ニシテ此條約ノ附錄第一號ニ揭載シタル者ニハ同附錄所揭ノ稅額ヲ課賦スルコヲ得ヘシ同附錄ニ揭載セサル物品ニハ日本稅關ノ普通稅目ニ依テ課稅ス可シ其稅額ハ該物品ノ產出地或ハ製造地ノ價格ニ第十條ニ揭載スル諸費ヲ加ヘ其總額ノ百分ノ三十ヲ超過セサル可シ

第十條

有ス可シ

第八條

一締盟兩國一方ノ軍艦或ハ商船若シ他ノ一方ノ沿海ニ於テ淺洲ニ乘上ケ或ハ難破シタル節該軍艦或ハ商船及ヒ其總部、該艦船附屬ノ諸什具物品類、荷物幷ニ商品、海中ニ投棄シタル物品或ハ該物品ヲ賣拂ヒタル代金並ニ該艦船中ニテ見出シタル一切ノ書類ハ該艦船ノ持主或ハ其代人ヨリ法ニ照シテ之ヲ要求スルトキハ悉皆之ヲ引渡ス可シ若シ右持主或ハ代人トモ其場所ニ在ヲサル節ハ其地ニ在留スル日本或ハ合衆國ノ(其場合ニ隨ヒ)領事官ヨリ其在留國ノ法律ヲ以テ定メタル期限內ニ之ヲ要求スルトキハ則チ右領事官ニ引渡ス可シ且又此事ニ關シ右領事官、持主或ハ其代人ハ右貨物保存費幷ニ內國船難破ノ節拂フ可キ難破船救費或ハ其他ノ費用ノミヲ拂フ可シ

一締盟兩國ノ人民ハ各自相互ニ他ノ一方ノ版圖內ニ於テ港內警察荷積陸揚並ニ商品貨物ノ納庫及ヒ其保護ニ關スル一切ノ事項ニ付キ內國人同樣ノ特許自由及ヒ權理ヲ享用ス可シ且此等ノ事項ニ關シテ現時內國人ニ賦課シ或ハ將來賦課スベキ者ヨリ過多ナルカ或ハ之ニ異ナル諸稅或ハ費金ヲ賦課セラルヽ事無カル可シ

第七條

一締盟兩國ハ通商便利ノ爲メ各自相互ニ總領事領事副領事及ヒ代領事ヲ命シ之ヲ他ノ一方ノ版圖內ニ在住セシムルヿ自由タル可シ然レヒ右ノ總領事領事副領事及ヒ代領事ハ其職務ヲ取扱フ前ニ定例ノ法式ニ從ヒ先ツ在任國政府ノ認可ヲ受ケサル可ラス又此締盟兩國ノ領事官ハ各自相互ニ他ノ一方ノ版圖內ニ於テ最優待國ノ同級ナル領事官ニ現時許與シ或ハ將來許與スヘキ一切ノ特許免除優免ヲ享

品ヲ日本皇帝所領内ニ輸入スルニ際シ其輸入ハ日本船舶ヲ以テシ或ハ合衆國船舶ヲ以テスルニ論ナク總テ一樣ノ稅ヲ賦課ス可ク又現時或ハ將來法律ニ適シテ輸入シ得ヘキ一切ノ物品ヲ合衆國内ニ輸入スルニ際シ其輸入ハ合衆國船舶ヲ以テシ或ハ日本船舶ヲ以テスルニ論ナク總テ一樣ノ稅ヲ賦課ス可シ而シテ又現時或ハ將來法律ニ適シテ輸出シ得可キ一切ノ物品ヲ日本皇帝所領内ヨリ輸出スルニ際シ其輸出ハ日本船舶ヲ以テシ或ハ合衆國船舶ヲ以テスルニ論ナク總テ一樣ノ稅ヲ賦課シ並ニ一樣ノ拂戻金ヲ許與ス可ク又現時或ハ將來法律ニ適シテ輸出シ得可キ一切ノ物品ヲ合衆國内ヨリ輸出スルニ當リ其輸出ハ合衆國船舶ヲ以テシ或ハ日本船舶ヲ以テスルニ論ナク總テ一樣ノ稅ヲ賦課シ並ニ一樣ノ拂戻金ヲ許與ス可シ

第六條

入スルニ際シ共ニ他ノ別國ノ產生或ハ製造ノ同種物品ニ賦課シ或ハ賦課ス可キ稅額ヨリ過多ナルカ或ハ之ニ異ナル諸稅ヲ賦課スルヿナカル可ク又兩國一方ノ版圖內ニ於テ他ノ一方ノ版圖內ニ輸出スル一切ノ物品ニ向テ現ニ別國ニ輸出スル同種物品ニ賦課シ或ハ將來賦課ス可キ者ヨリ過多ナルカ或ハ之ニ異ナル諸稅或ハ費金ヲ賦課スルヿ無カル可シ又兩國一方ノ版圖內ニ於テ別國ノ產生或ハ製造ニ係ル物品ノ輸入ヲ禁止セサル間ハ他ノ一方ノ版圖內ノ產生或ハ製造ニ係ル同種物品ノ輸入ヲモ禁止スルヿ無カル可ク又兩國一方ノ版圖內ニ於テ別國ニ向ヒ物品ノ輸出ヲ禁止セサル間ハ他ノ一方ノ版圖內ニ向テ同種物品ノ輸出ヲモ禁止スルヿ無カル可シ

第五條

一現時或ハ將來法律ニ適シテ輸入シ得可キ一切ノ物

酬ヲ要セスシテ之ヲ許與シ若シ別段ノ約束ニ依テ許與シタル者ニ係ハレハ之ト同樣ナルカ又ハ之ニ相應スル約束ヲ以テ之ヲ許與ス可シ

第三條

一日本皇帝所領內ノ諸港ニ於テ噸稅、燈明稅、港稅、水先案內料、檢疫費、難破船救費或ハ其他何等ノ地方課金ニテモ日本船舶ニ賦課スル者ヨリ過多ナルカ或ハ之ニ異ナル稅金或ハ費金ヲ同一ノ港及ヒ同一ノ場合ニ於テ合衆國船舶ニ賦課スルヿナカル可シ又合衆國內ノ諸港ニ於テモ合衆國船舶ニ賦課スル者ノ外同一ノ港及ヒ同一ノ場合ニ於テ日本船舶ニ賦課スルヿナカル可シ

第四條

一日本皇帝所領內ノ產生或ハ製造ニ係ル一切ノ物品ヲ合衆國內ニ輸入スルニ際シ又ハ合衆國內ノ產生或ハ製造ニ係ル一切ノ物品ヲ日本皇帝所領內ニ輸

ヲ占有シ並ニ法律ノ禁止セサル一切ノ産物製造品及ヒ商品類ヲ御賣買或ハ小賣買スルコヲ得可シ

一締盟兩國ノ軍艦ハ前項同樣相互ニ他ノ一方ノ版圖內ニ於テ別國軍艦ヘ進航投錨滯在及ヒ修覆ヲ許可シ或ハ將來許可ス可キ諸所諸港及ヒ諸河ニ入港スルノ自由ヲ有ス可シ而シテ兩國地方規則ノ外國軍艦ニ照用ス可キモノハ雙方相互ニ之ニ服從スベシ

一本條ノ條欵ハ沿海貿易ニ照用ス可ラス該貿易ハ兩國相互ニ之ヲ自己ノ權內ニ貯存シ各自ノ法律ニ從テ之ヲ管理ス可シ

第二條

一締盟兩國ノ一方ニテ現ニ別國人民ニ許與シ或ハ將來許與ス可キ通商或ハ航海ニ關スル殊遇特許或ハ優免ハ總テ他ノ一方ノ人民ニモ均シク之ヲ許與ス可シ而シテ此殊遇特許或ハ優免ハ若シ報酬ヲ要セスシテ別國ニ許與シタル者ニ係ハレハ均シク亦報

日本及ヒ米利堅合衆國兩國間通商及ヒ航海條約草案

一日本國皇帝陛下及ヒ米利堅合衆國ハ更ニ兩國人民ノ通商ヲ振興セシメンコトヲ希望スルニ付通商及ヒ航海條約ヲ結締スルコトノ必要ナルヲ察シ因テ日本皇帝陛下ハ……合衆國大統領ハ……ヲ其全權大臣ニ命シタリ而シテ兩國ノ全權大臣ハ相互ニ各自ノ委任狀ヲ示シ其良好允當ナルヲ認メ以テ左ノ條々ヲ協議決定セリ

第一條

一締盟兩國ノ人民ハ各自相互ニ他ノ一方ノ版圖内ニ在ル諸所諸港及ヒ諸河ニシテ別國人民ヘ通商ヲ許可シタル場所ニ船舶及ヒ貨物ヲ以テ自由安全ニ來航スルノ自由ヲ有ス可シ又兩國人民ハ上ニ記ス所ノ場所ニ居住シ其場所ニ於テ家屋倉庫ヲ借受ケ之

一

秘

第四號

日本及ヒ米利堅合衆國間
通商及ヒ航海條約草案

條約改正懸印

No 1144.

Enclosure.

ANNEX 1. TO THE TREATY

OF

COMMERCE AND NAVIGATION

BETWEEN

JAPAN AND the United States of America.

ANNEX 1. TO THE TREATY
OF
COMMERCE AND NAVIGATION
BETWEEN
JAPAN AND the United States of America

List of articles of Merchandise, together with the rates of duty with which they are chargeable on importation into Japan.

NO.	ARTICLES.	PER.	YEN.	SEN.	RIN.
1	Canvas and cotton ducks . .	Sq. yd.	0	03	7
2	Clocks	Ad. val.	20%		
3	Cotton, raw	Catty.	0	00	9
4	do. yarn.	„	0	03	2
	Cotton fabrics:—				
5	Cotton satins	Sq. yd.	0	01	7
6	do. velvets or velveteens. .	„ „	0	06	0
7	Chintzes or furnitures . .	„ „	0	01	0
8	Shirtings, gray	„ „	0	00	5
9	do dyed	„ „	0	01	0
10	T. Cloths.	„ „	0	00	8
11	Turkey red cambries . . .	„ „	0	01	0
12	Victorian lawns	„ „	0	00	7
13	Kerosene oil	Gallon.	0	05	0
14	Lead, pig	Picul.	0	40	0
15	Machinery, all kinds (with the exception of those free of duty).	Ad. val.	5%		
16	Iron, rod and nail rod . . .	Picul.	0	22	5
17	Safflower	Catty.	0	07	3
18	Sole leather	„	0	04	0

ANNEX 1. TO THE TREATY
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16	Iron, rod and nail rod . . .	Picul.	0	22	5
17	Safflower	Catty.	0	07	3
18	Sole leather	„	0	04	0

NO.	ARTICLES.	PER.	YEN.	SEN.	RIN.
	Sugar (under the tenth of Japanese standard colours).				
19	No. 1 to No. 3 . .	Catty.	0	01	2
20	No. 4 to No. 6 . .	„	0	01	8
21	No. 7 to No. 9 . .	„	0	02	4
22	No. 10.	„	0	03	0
23	Umbrella's ribs or frames in complete set, or otherwise.	Doz.	0	12	5
24	Watches	Ad. val.	25%		
	Woollen stuffs:—				
25	Blankets.	Catty.	0	05	5
26	Italian cloths	Sq. yd.	0	03	3
27	Mousseline de laine . . .	„ „	0	02	8
28	Orleans	„ „	0	02	0
29	Woollen cloths (Known as "Rasha" in Japan, under whatever name or names imported) wholly of wool.	„ „	0	12	0
30	Silk and cotton mixtures . .	Ad. val.	25%		

NO.	ARTICLES.	PER.	YEN.	SEN.	RIN.
	Sugar (under the tenth of Japanese standard colours).				
19	No. 1 to No. 3 . . .	Catty.	0	01	2
20	No. 4 to No. 6 . .	„	0	01	8
21	No. 7 to No. 9 . .	„	0	02	4
22	No. 10.	„	0	03	0
23	Umbrella's ribs or frames in complete set, or otherwise.	Doz.	0	12	5
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二四 時辰儀（クロノトメイ）　　從價百分之二十五

毛布類

二五 臥氈（フロアカーペット）　　每斤五錢五釐

二六 毛繻子（イタリヤンクロース）　　每方碼三錢三釐

二七 緬縮呉呂（ミスリングレイン）　　每方碼二錢八釐

二八 オルレンス（ゴロー）　　每方碼二錢

二九 純毛羅紗原名如何ヲ論セス帝國ニ於テラシヤト通稱スル）　　每方碼十二錢

三〇 絹綿布類　　從價百分之二十五

二四	時辰儀（ボンボンドケイ）	從價百分之二十五
	毛布類	
二五	臥氈（フランネット）	每斤五錢五釐
二六	毛繻子（イタリヤンクロース）	每方碼三錢三釐
二七	細縮呉呂（モスリンデレイン）	每方碼二錢八釐
二八	オルレンス（キヤラコゴロ）	每方碼二錢
二九	純毛羅紗（原名如何ヲ論セス帝國ニ於テラシヤト通稱スル）	每方碼十二錢
三〇	絹綿布類	從價百分之二十五

二一二　緋金巾　毎方碼一錢

二一三　寒冷紗　毎方碼七釐

二一三　石炭油　毎瓦（ガロン）五錢

二一四　塊鉛　毎担（ピコ）四十錢

二一五　諸機械類（無税部外ノ）　従價百分ノ五

二一六　竿鐵及釘鐵（ロッドアイロン　ネイルロッドアイロン）　毎担二十二錢五釐

二一七　紅花　毎斤七錢三釐

二一八　靴底皮　毎斤四錢

砂糖（帝國色位十級以下ノ）

二一九　自第一號至第三號　毎斤一錢二釐

二二〇　自第四號至第六號　毎斤一錢八釐

二二一　自第七號至第九號　毎斤二錢四釐

二二二　第十號　毎斤三錢

二二三　傘骨（附屬金具ノ備リタルト否トヲ論セス）　毎打（ダース）十二錢五釐

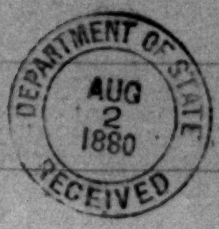
日本及ヒ米利堅合衆國兩國間通商及ヒ
航海條約附錄　第一號

日本國輸入品目並ニ其稅則

一	帆布（綿麻ノ別無ク）	每方碼三錢七釐
二	時辰鐘	從價百分之二十
三	綿英	每斤九釐
四	綿絲	每斤三錢二釐
	綿布類	
五	綿繻子	每方碼一錢七釐
六	綿天鵝絨	每方碼六錢
七	左貝紗	每方碼一錢
八	生金巾	每方碼五釐
九	色金巾	每方碼一錢
一〇	生天竺布	每方碼八釐

Mr Adee +
Col Magan

No 1145.



United States Legation,
Japan,
Tokei, July 9, 1880.

Mr Bingham
to the
Hon Secretary of State.

Subject.

Transmitting accounts for the Quarter ending July 9, 1880.

Enclosure.

Statement of account, abstract of contingent expenses, and two vouchers.

M

No 1145.

United States Legation,
Japan,
Tokei, July 9, 1880.

Hon William M. Evarts,
Secretary of State,
Washington, D.C.

Sir:

I have the honor to transmit herewith my account for salary and contingent expenses for the Quarter ended the 30th ultimo, showing that I have received as salary for the Quarter the equivalent of Three thousand dollars ($3000 00) United States gold, and no more; and that for my contingent draft, negotiated the 5th of April last,

I

I received the equivalent of One hundred and seventy five dollars (175^{00}) United States gold, and no more. The account shows a balance in my favor of One hundred and three $^{27}/_{100}$ dollars — (103^{27}), which is covered by a draft of today's date on Messrs Morton, Rose and Co, London, for Thirty five pounds, nineteen shillings and two pence (£35-19-2) for One hundred and seventy five dollars United States gold, and no more, for which draft I will account at the end of the current Quarter.

I have the honor to be,

Sir,

Your obedient servant,

Wm A. Bringhurst

No 1146. Asks by Despatch from Japan Sept 14. 1880 Mr. Cridler Clerk

W Adee



United States Legation,

Japan,

Tokei, July 17, 1880.

Mr Bingham

to the

Asst Secretary of State.

Subject.

A British seaman of Belgian nativity commits an offence in Kobe of which the British Consul refuses to take jurisdiction; the Belgian Consul also refuses because the accused is a British seaman. Mr Bingham refers to the Order in Council of 1865, which he thinks does not contemplate that British Courts in

Read

China and Japan shall take
jurisdiction over British subjects
serving on American vessels.

No 1146.

United States Legation,
Japan,
Tokei, July 17, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

Referring to my No 112 dated the 1st ultimo, in which I had the honor to enclose a copy of the correspondence between Mr Kennedy, the British Chargé d'Affaires in Japan, and myself in relation to the case of John Martin Ross, an American seaman recently tried and convicted before Mr Consul General Van Buren

1

of the Crime of murder Com=
mitted on board of the American
merchantmen "Bullion" when
in the harbor of Yokohama.
I now beg leave to acquaint
you that on the 14th instant
in a Conversation with me Mr
Kennedy informed me that
a short time ago, since the
said correspondence between us,
a British seaman assaulted
a Japanese when in a boat
in the harbor of Kobe, and was
complained of before the Acting
British Consul in that port, who
refused to take jurisdiction of
the complaint because the
British seamen so charged
was a native of Belgium.

Mr

Mr Kennedy further stated that the accused was after this refusal complained against for his said offence before the Belgian Consul at that port, who in turn refused to take cognizance of the complaint & to hold the accused to answer before him, because he (the Belgian Consul) held that, being a British seaman, the accused was justiciable under Existing treaties only in the British Tribunals.

This new departure of the British Consul at Kobe, following the action taken by the British Consul at Yokohama in the case of Ross with the

approval

approval of Mr Kennedy, has thus early demonstrated how effective is this mode of procedure to evade and set aside the treaty obligations of Great Britain to Japan. I beg leave in this connection to call your special attention to Article 12, sections 101-105 inclusive, of Her Britannic Majesty's Order in Council of 1865, a copy of which I had the honor to transmit to the Department in my No 229 of date May 21, 1875. The provisions of these several sections, as I understand by reason of the Order in Council of 1878, apply equally as to China and Japan

to

to all offences committed by British subjects on board of the vessels therein specified — when within One hundred miles of the coast of Japan or China. You will please observe that in section 101 it is provided that "where a British subject, "being after the announcement "of this Order in China or in "Japan, is charged with having "committed any offence within "a British vessel at a distance "of not more than One hundred "miles from the coast of China "[or Japan], or within a Chinese "or Japanese vessel at such "a distance as aforesaid, or "within a vessel not lawfully

entitled

"entitled to claim the protection
"of the flag of any State at such
"a distance as aforesaid, any
"of Her Majesty's Courts in China
"or Japan within the jurisdiction
"whereof he may be found may
"cause him to be apprehended
"and brought before it and may
"take the preliminary Examination
"and commit him for trial".
It is further provided (section
102) that the party so arrested, if
brought before the British Pro-
vincial Court in Japan, may
be tried. It seems to me not
to be doubted that under these
provisions of this Order a British
subject cannot be held to answer
before any British Court either

in

in China & Japan for any offence & crime committed on board any vessels when within one hundred miles of the coast of either country, save when such crime & offence shall have been committed within the limit of one hundred miles of one & other of said countries and on board of a British, Japanese & Chinese vessel, & a vessel which may not within these waters "lawfully claim the pro- "tection of the flag of any State." Surely all the vessels of the United States within the limit named may lawfully claim the protection of the flag of the United States, and are therefore not in any sense within the jurisdiction of

the

"entitled to claim the protection
"of the flag of any State at such
"a distance as aforesaid, any
"of Her Majesty's Courts in China
"or Japan within the jurisdiction
"whereof he may be found may
"cause him to be apprehended
"and brought before it and may
"take the preliminary Examination
"and commit him for trial".

It is further provided (section 102) that the party so arrested, if brought before the British Provincial Court in Japan, may be tried. It seems to me not to be doubted that under these provisions of this Order a British subject cannot be held to answer before any British Court either

in

in China & Japan for any offence & crime committed on board any vessels when within one hundred miles of the coast of either country, save when such crime & offence shall have been committed within the limit of one hundred miles of one & other of said countries and on board of a British, Japanese & Chinese vessel, & a vessel which may not within these waters "lawfully claim the pro- "tection of the flag of any State." Surely all the vessels of the United States within the limit named may lawfully claim the protection of the flag of the United States, and are therefore not in any sense within the jurisdiction of

the

the British Tribunals of China & Japan; neither can those Tribunals under the limitations of this Order lawfully claim jurisdiction to try a subject of Great Britain for a crime committed by him against American law and on board an American vessel when the same is within the territorial waters of either Japan & China.

As the greater includes the less I may say this limitation in restricts the jurisdiction of British Courts in this Empire and in China to try and punish British subjects for crimes committed by them on board of the vessels specified in the Order to such crimes

as

as they may commit on board thereof and within the limit of One hundred miles from the shores of either country, and therefore excludes the claim now made for the first time in Japan, that a British Court may claim jurisdiction to the exclusion of the United States over an American seaman of British nativity for a crime committed by such seamen on board of an American merchant ship when the same is within Japanese waters.

It may well be enquired why this limitation was declared in the Order in Council, if it is now to be disregarded as

as proposed by the British
Chargé d' Affaires and Consul.

I have the honor to be,

Sir,

Your obedient servant,

Mr. A. Bingham

Ade
Hy

No 1147.

Wade



United States Legation,

Japan,

Tokei, July 20, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

The Japanese Government has appointed Mr Joseph O. Carter its Commercial Agent in Honolulu.

No 1147.

United States Legation,
Japan,
Tokei, July 20, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

Referring to Instructions Nos 491 and 499 (with enclosures) in relation to the appointment of Mr Joseph O. Carter to be Japanese Commercial Agent at Honolulu, I beg leave to acquaint you that on the 14th of April and the 28th of May last I addressed notes on the subject of the appointment

of

of Mr Carter, as recommended by Mr Minister Comly and by the Minister for Foreign Affairs of Hawaii, and that on the 13th ultimo I received a communication from His Excellency Mr Inouye, the Minister for Foreign Affairs of Japan, in which the Minister informed me that in accordance with the recommendation so made and transmitted under your instructions the Japanese Government had appointed Mr Carter to be Commercial Agent of Japan in Honolulu and that he would receive his appointment by the next mail steamer.

I have the honor to be, Sir, Your Obt. servant,

J. A. Kingham

No 1148. W Adm



United States Legation,

Japan,

Tokei, July 20, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

Mr Bingham, as directed by "sep-
arate" Instruction of April 30,
has requested information as
to the gold and silver circulation
of Japan &c. &c.

No 1148.

United States Legation,

Japan,

Tokei, July 20, 1880.

Hon William M. Evarts,

Secretary of State,

Washington D.C.

Sir:

Referring to circular of Instruction marked "Separate" of date April 30, 1880, in regard to certain information requested by the Honorable the Secretary of the Treasury, I beg leave to inform you that I promptly communicated a copy of your Instruction to the Minister for Foreign Affairs and respectfully

solicited

solicited a full reply to the several interrogatories and enquiries therein made, at as early a day as might be convenient, for transmission to our Government.

I have the honor to be,

Sir,

Your obedient servant,

Wm A. Bingham

No 1149.

DEPARTMENT OF STATE
AUG 27 1880
RECEIVED

United States Legation,
Japan,
Tokei, July 20, 880.

Mr Bingham
to the
Hon Secretary of State.

Recd Sept 11

Subject.

Mr Bingham has obtained and forwarded to Mr James Harris an Exequatur and his commission as Vice Consul of the United States at Kobe.

No 1149.

United States Legation,
Japan,
Tokei, July 20, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

In further reply to your No 509 I have the honor to advise you that having applied to His Imperial Japanese Majesty's Minister for Foreign Affairs for an exequatur to be issued to Mr James Harris in the quality of Vice Consul of the United States at Osaka and Hiogo, I have received from the

the Foreign Minister an Ex=
quatur for Mr Harris, and
have transmitted the same
together with the certificate
of his appointment to that
gentleman.

I have the honor to be,

Sir,

Your obedient servant,

Jno A Bingham

No 115-0.

Acted by Dept of Judge O'Connor Sept 15. 1880 Mr. Cister.

See supplemental report of Judge O'Connor Sept 14. 1880 rec'd Sept 15. 1880 Mr. Cister.

Capt Wm R Browne informed

Mr O'Connor & Mr Adee

DEPARTMENT OF STATE
AUG 27 1880
RECEIVED

United States Legation,

Japan,

Tokei, July 21, 1880.

Mr Bingham

to the

Hon. Secretary of State.

Subject.

The Foreign Minister refuses to pay the claim of Captain Wm R. Browne. Mr Bingham again urges its merits upon his attention. More lapse of time, the chief reason assigned for the refusal to pay the claim, cannot, he insists, be considered a sufficient cause for rejecting a claim, the justice and equity of which have been fully proved.

Enclosure

Enclosures.

1. Mr Inouye to Mr Bingham July 8/80
2. Mr Bingham to Mr Inouye " 20.
3. Mr Bingham to Mr Inouye April 9 "

No 1150.

United States Legation,

Japan,

Tokei. July 21, 1880.

Hon William M. Evarts,

Secretary of State,

Washington D.C.

Sir:

Referring to my several despatches to the Department numbered, respectively, 1026, 1052 and 1094 in relation to the claim of Captain William R. Browne, I now beg leave to acquaint you that on the 8th instant His Excellency Mr Inouye, the Minister for Foreign Affairs, addressed me a note (a copy of which is herewith) in which he states that for the reasons

1/1150

Therein

therein set forth he "most respectfully
"but firmly declines to admit the
"validity of this unlooked for claim",
and adds further that this decision
has been reached "after full de-
"liberation and must be regarded
"as definitive".

I beg leave to say further that
the Minister for Foreign Affairs was
possessed by me in my several
despatches to him of copies of
all the statements, testimony and
also of the log of the "Wilmington"
which the Department transmitted
to me, and was especially advised
in my despatch to him of date the
27th of November 1879, numbered 1124,
as follows: "I beg to repeat that
"my Government has instructed

me

"me to bring this claim to Your
"Excellency's attention and to state
"that due reparation will be expected
"from His Imperial Japanese Majesty's
"Government".

I desire further to say that in my several despatches to Mr Inouye I anticipated and answered all the objections which he now urges as reasons for the rejection of this claim, and expressed my opinion that it was equitable and just and should be paid, as presented under your Instruction to me, without interest.

On the 20th instant I replied to Mr Inouye's communication of the 8th instant, a copy of which reply I have the honor to enclose.

2/1150

You

You will please observe that in this reply I express my regret to Mr Inouye that his Government refuses to allow the claim so just and equitable as to make any reparation whatever to Captain Browne for the wrong and injury done him by His Excellency's Government, in violation of its treaty obligations to the United States, and conclude by giving it as my opinion that mere lapse of time (which is the chief and I may say the sole reason assigned for the rejection of the claim) cannot absolve the Imperial Government of Japan from its treaty obligations to that of the United States and its

liability

liability by virtue thereof to make just reparation to a citizen of the United States for a wanton and gross violation by the Japanese Government of his treaty rights whereby he suffered pecuniary loss, as clearly shown by the testimony, to the amount of at least Thirty six thousand dollars ($36,000.00) exclusive of interest.

It is to my mind absurd that the mere neglect of the agents of the United States to promptly present such a claim forfeits the right of our Government to demand it and releases the Japanese Government from its obligation arising under its

Existing

Existing treaties with our Government to pay it.

As Mr Imonye has been pleased in this communication to refer to a remark made by me in my despatch to him on this subject of date the 9th of April last, it seems proper that I should submit for your consideration what I said in that despatch and all that I said to His Excellency, to the effect that this small claim should be paid "as presented under my instructions" and "not be permitted to obstruct "in any way the friendly relations "between the two countries." Herewith

3/1150 I have the honor to transmit a copy of my despatch of the 9th

of April last to Mr Inouye above mentioned.

Referring to my No 1116 to the Department of date the 8th of May last in relation to the Simonoseki Indemnity Bill and the proposed compromise of the "Peiho" and "Valetta" claims and also of the claim of Captain Browne, I beg leave to again suggest, as I therein suggested, that it might be well to close all these and like claims and repay to Japan the residue of the Simonoseki Indemnity in accordance with the President's recommendation in the annual message of last December.

Awaiting any further instructions

instructions in relation to this claim which you may be pleased to give.

I have the honor to be,

Sir,

Your obedient servant,

Wm A Burgham

No 1150.

Enclosure 1.

Copy.

No 22.

Foreign Office, Tokio,
The 8th the 7th month,
The 13th year Meiji.

H.E. John A. Bingham.

&c &c &c

Sir:

In acknowledging Y.E's. communications of the 9th of April and the 12th of June upon the case of the "Wilmington" which occurred in the year 1855, I would first refer briefly to the communication which I had the honor to address to Y.E. under date the 15th January of the present year, in which I felt it my duty respectfully to decline entertaining the case as then brought to my notice at the same time that I assured Y.E. of my readiness to give it consideration upon some further particulars regarding the nature of the

claim being furnished me, and after commenting upon the staleness of the claim in the hope of inducing H.E's. Govt. to reconsider the desirability of proceeding with a case labouring under such Exceptional disadvantages, I concluded with these words: "Should the matter "be presented in a more substantial form "it will remain for further consideration, "having regard to the nature of the case "actually made out, whether it not the "same is one properly to be dealt with "by this Department; and also how "far, according to the equities of the case, "the claim should be considered as barred "by mere lapse of time in its presentation."

With the two despatches now under reply H.E. has been good enough to enclose certain statements in support of the claim, upon perusal of which I have in accordance with promise given the whole matter my most attentive Consideration.

In the former of the two communications just alluded to - that dated 9th April 1880 - H.E. says: - "The fact that

"this claim was not pressed at the
"time by my Govt. and was delayed
"until now cannot forfeit the right of
"Captain Browne and of the other owners,
"represented by him, of the vessel and cargo
"to demand their damages in the premises,
"nor has my Govt. by such delay forfeited
"its right to demand suitable indemnity
"for this gross wrong; nor can the neglect
"on the part of the agents of the U.S.
"Govt. to present the claim promptly release
"the Japanese Govt. from its just liability
"to respond in damages to Captain
"Browne and his associates for the loss
"to which he and they were subjected by
"the denial of his treaty rights and the
"treaty rights of my Govt. by the unlawful
"action of the Governor of Simoda, as
"shown by the letter and protest of
"Captain Browne herewith enclosed. The
"forbearance of my Govt. to press the
"claim at that time cannot be made
"a ground of complaint so long as my
"Govt., as H.E. has already been advised,
"makes no demand for interest thereon

"not even for the full amount of the
"principal."

From the propositions thus broadly laid down by Y.E. I am reluctantly constrained to dissent. That in matters for the decision of which recourse is had to the canons of International Law there are not drawn the same well-defined lines of "limitation" and "prescription" which obtain in systems of municipal jurisprudence I am willing to admit: but the great principles underlying all rules of this nature are by the consent of jurists equally applicable, and, by the usage of nations, are in point of fact equally applied to cases of an international character. I maintain most unreservedly to impose upon this Government any obligations in the premises are absolutely and irrevocably forfeited by the laches of those (whoever they be) who with all the materials in their hands have chosen to nurse this claim in silence for a space of 25 years and have now presented it for the first time when they

must well know that for this Govt. to obtain evidence in its own defence is practically impossible. Had representations been made within any reasonable time it is quite possible that the claimants' allegations would upon investigation have turned out to be unfounded; & at any rate that facts might have been elicited giving a totally different complexion to the whole affair: indeed from the circumstance that other foreigners were actually engaged in peaceable intercourse and trade with the people of Simoda, it is not only possible but looks Extremely probable that the treatment which this claimant declares himself to have experienced was by no means the unprovoked and improper act which his story would make it appear.

That a claimant, & those acting for him should be held justified in taking the course here adopted, and that the party complained against should in

default of that evidence which the wilful delay of the Claimant or his agents has made it impossible to obtain, be called upon to admit the truth of the matters charged and meet them in damages is a contention which thus nakedly stated is so preposterous and so shocking to common sense and justice and to the common understanding on which the affairs of men are conducted, that I am sure Y.E. would hasten to repudiate it as an abstract proposition, and yet, if I comprehend aright, it is to nothing short of this that the propositions laid down in the above passage really amount, when analyzed and reduced to an abstract form: and I feel confident therefore that Examination of the actual effect of these propositions will induce Y.E. to reconsider the position assumed.

It may readily be admitted that there are cases where a Claimant failing, through disabilities under which he may labor, to present his claim in reasonable

time, is justified, upon satisfactory Explanation of the delay, in proceeding with it at a time when it would otherwise be held to be inadmissable: but no such excuse is or can be made in this case: the allegations upon which the Claimant rests were made by him, and made so far as he was concerned through the proper Channels at the very time when the events happened; all his evidence was ready at the same time, and, from the nature of the case, nothing can or could be added to it by delay: and yet it is not until after the lapse of just a quarter of a century that any communication whatever is made upon the subject to this Government.
These considerations will, I have little doubt, appeal to the great good sense and sense of justice of H.E. and of the U.S. Govt., and will convince both H.E. and that Govt. that I am doing no more than my plain duty in declining, as on the part of this Govt. I must most respectfully

and most firmly decline to admit the validity of this unlooked for claim.
That my inability to comply in such a matter with the demands of H.E's. Govt. could possibly have the effect, deprecated by H.E. of disturbing for one moment the general relations of friendship between the two Govts, is an idea of which I am loth even to admit the possibility. But as I, in common with H.E. should regret that any cause of dispute, how-soever removed from National considerations, should be allowed to remain open, I would beg H.E. to be assured, and to convey to your Govt. the assurance, that the answer which I am now reluctantly yet most obviously compelled by my duty to return has been decided upon after full consideration and must be regarded as definitive.

I avail myself &c &c.

(Sgd.) Inouye Kaoru.

H.I.J. Majesty's Minister for Foreign Affairs.

No 1150.

Enclosure 2.

Copy No 1193.

U.S. Legation,
Tokei April 9, 1880.

H. E. Inouye Kaoru,

* * *

Sir:

Referring to Y.E.s communication to me of date the 15th of January last in relation to the claim of Captain Wm R. Browne, which I had the honor to present to Y.E. in accordance with instructions from my Government I beg leave to enclose herewith for your consideration copies of certain testimony in support of said claim which has been transmitted to me by the Honorable the Secretary of State. This testimony, Y.E. will observe, consists of the sworn statements of Geo. G. Fitch and Wm R. Browne, dated, respectively, January 22 and January 30, 1880; also two letters of

Captain Browne to Mr Murphy, then U.S. Consul at Shanghai, dated October 29th and November 24, 1855. Also the letter of Consul Murphy dated November 1, 1855, transmitting the official note of Captain Browne dated October 29, 1855, and the official certificate of Consul Murphy dated November 27, 1855, transmitting to the Department of State the protest and claim of Captain Browne dated Nov. 24, 1855. I also enclose a copy of a letter of Mr Thomas Fitch to Captain Browne of date the 24th of January 1880.

You will please observe that, as shown by Captain Browne's protest of date 24th November 1855 and his letter of 29th October 1855 to Consul Murphy, he then and there complained, as he does now, of the violation by the Government of Simoda of the treaty obligations of Japan, of the denial of his rights, of the refusal of the Government to open and answer his letter and of the return thereof unopened, of the refusal to permit him to land his cargo or

to obtain greatly needed supplies, or to trade with the Japanese, and finally of the order for him to leave Japan, which he was compelled to do at a loss to himself and the other owners of the vessel, as he then stated, of at least $36.000.00 The fact that the claim was not pressed at the time by my Govt. and was delayed until now cannot forfeit the right of Captain Browne and of the other owners of the vessel and cargo represented by him to demand their damages in the premises, nor has the right of my Govt. to demand suitable indemnity for this gross wrong been forfeited by such delay, nor can the neglect on the part of the agents of the United States Govt to present this claim promptly relieve the Japanese Govt. from its just liability to respond in damages to Capt. Browne and his associates for the loss to which he and they were subjected by the denial of his treaty rights and the treaty rights of my Govt. through the

wrongful action of the Govrnmt of Simoda.

The forbearance of my Govt. to press the claim as at that time cannot be made a ground of complaint, so long as my Govt, as Yr E. has already been advised, makes no demand for interest thereon, nor even for the full amount of the principal. The facts of the case are established by the sworn statements of Captain Browne and Mr Geo. G. Fitch herewith enclosed. Allow me to add that these sworn statements are conclusive with my Govt. and, in my opinion, ought to be conclusive with Yr Es. Govt.

It is very desirable that this small claim, as heretofore presented under my instructions, should be paid and not be permitted to obstruct in any way the friendly relations between Yr Es. Govt. and that of the U.S. of America.

Hoping that Y.E. may view this question as I do, and that a satisfactory arrangement may be made.

I beg leave to remain &c. &c.

(Sgd.) Jno. A. Bingham.

No 1150.

Enclosure 3.

Copy.

No 1274.

U.S. Legation,
Tokei, July 21, 1880.

H.E. Inouye Kaoru,

&c &c &c

Sir:— Referring to Y.E's. communication of date the 8th instant in relation to the claim of Capt. Wm R. Browne, which I had the honor to present in accordance with the instructions of the Honorable the Secretary of State, I beg leave to say that I deeply regret the refusal of Y.E's. Govt., as stated by you, to make any reparation whatever, as requested by my Govt., for the great damage done to Captain Browne by the gross and wrongful violation of the treaty obligations of Japan to the U.S. in the matter of the American merchant Ship "Wilmington," as shown in my several communications to Y.E. and in the testimony and documentary evidence

which I have had the honor to lay before you.
Upon the record, as it now remains in Y.E's possession, it is not to be questioned that the claim as presented by my Govt. is clearly made out, nor is it to be overlooked that the sole reason for its rejection by Y.E's. Govt. is the long delay in its presentation by my Govt. the cause of which has been explicitly stated in my several communications.
With due deference to Y.E's opinions as expressed in your communication, I respectfully submit that mere lapse of time cannot absolve Y.E's. Govt. from its treaty obligations to that of the U.S. to make reasonable and just reparation to a citizen of the U.S. for a wanton violation of his treaty rights by Y.E's. Govt. whereby he suffered direct pecuniary loss and damage, as the testimony shows, of at least $36,000 ^{oo} exclusive of interest.
In accordance with Y.E's. request I shall submit a copy of your communication to my Govt.

I avail myself &c &c

(Sgd.) Jno. A. Bingham

See Japanese Mins. '80-
not dated Aug '80 Subject:
Dept's reply that Satisfactory
Mr Bingham considerates
Sept. 9, 1880 Mr Giles
Clerk

No 115.

ack of file
Mr Blood



United States Legation,

Japan,

Tokei. July 21, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

Mr Inouye answers Mr Bingham's protest as to the duty proposed to be laid upon Kerosene, attempting to show that it is not excessive. Mr Bingham replies, expressing his belief that the proposed duty is not just to the United States.

Enclosures.

Enclosures.

1. Mr Inouye to Mr Brigham July 12 /80

2. Mr Brigham to Mr Inouye " 21 "

No 1151.

United States Legation,
Japan,
Tokei, July 21, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

Referring to my No 1114, in which I had the honor to enclose a copy of my protest against the discriminations proposed to be made upon Kerosene oil &c. on imported into Japan from the United States, I beg leave to advise you that on the 12th instant His Excellency Mr Inouye, the Minister for Foreign

Affairs

Affairs, addressed a note to
1/1151 me in reply thereto, a copy
of which I have the honor to
enclose. I have this day made
2/1151 answer to Mr Inouye, a copy of
which is also herewith.
I regret that His Excellency in-
sists upon the discrimination
so justly complained of by
our Government. You will
please notice that in my reply
I repeat the objection to any
such discrimination against
Kerosene oil as is proposed
and urge a re-consideration of
my protest made under your
instruction in the hope that
the manifest proposed injustice,
as impolitic as it is unjust,

will

will not be persisted in by this Government.

I have the honor to be,

Sir,

Your obedient servant,

Wm. A Kingham

No 1151.

Enclosure 1.

Copy.

No 23.

Foreign Office, Tokio,
The 12th the 7th month
The 13th year Meiji.

H.E. John A. Bingham
&c &c &c
Sir:

I have the honor to acknowledge receipt of Y.Es. despatch bearing date the 24th April, in which after referring to the relative value of Exports and imports between Japan and the United States and Great Britain, respectively, you protest on behalf of your Government against the duty H.I.J.Ms. Government proposes to levy on Kerosene upon the ground that the said duty would be an unjust discrimination against the United States in view of the fact that it more than double the duty proposed to be levied on a staple production imported

from

from any other country, and Y.E.
adds that the proposed imposition of
the duty on Kerosene cannot but be
regarded by your Government as a hostile
measure and concludes by expressing the
hope that H.I.Ms. Government will
correct and equalize the proposed tariff.

I have to assure Y.E. that the
tariff referred to was not framed with
the least intention of discriminating against
the productions of the U.S., but that
on the contrary H.I.Ms. Government
has endeavored to arrange the proposed
scale in such a way as to bring about
a fair and adequate increase in the
aggregate of our Custom revenue without
at the same time doing any injustice
to any of the parties concerned. I need
therefore hardly express to Y.E. my sincere
regret that the U.S. Government should
deem the said tariff hostile to its
interests. I venture to think that
your Government in protesting against
the proposed rate of duty on Kerosene
does so on the supposition that any

Increase

increase in the rate of duty will be followed by a material decrease in the aggregate amount of consumption, and hence of import, to the detriment of the U.S. production: but I feel sure that Y.E. will allow the protest to be unnecessary if it can be shown to Y.E's Govt. that the proposed increase in the rate of duty is not calculated in the circumstances of this particular case to exercise any appreciable influence on the aggregate amount of consumption or import; and that the causes regulating the consumption of this article must be looked for elsewhere than in the rate of duty. It may be remarked in passing that this view might, in one respect, be supported by reference to the fact that the abolition of the duty on tea by the U.S. Govt. did not have the effect of augmenting the import of that article; and being so, that it should follow that the maintenance of a light

duty

duty on kerosene, a staple necessity bearing the same relations to the requirements of this Empire that tea does to the demands of the people of the U.S., would not have the effect of decreasing its importation & consumption. But I would point Y.E's attention to the following considerations. The production of kerosene in this country is exceedingly small, and, so far as the results of recent geological surveys show, there is little prospect of any material increase in the future; so that it can be predicted with some certainty that Japan must remain solely dependent upon the American supply of oil. Recognizing the fact that Kerosene is an article of commerce entitled to be classed as a "necessary," it will not be disputed that in the absence of a cheap and better substitute the demands of this country must be met almost exclusively by the importation of the production

7

of the U.S. Now when we come to ask whether Japan possesses any such substitute among her natural products we find the only possible one to be vegetable oil. But it is found that the average price of Osaka seed oil during the last half of the 12th year of Meiji was, in round figures between 55 and 59 sen per gallon, whilst that of Kerosene is about 20 sen per gallon; the comparison shows that the oil formerly used cannot now under the most favorable circumstances compete with Kerosene.

As to the actual rate of duty proposed I beg to point out to Y.E. that the duty levied in the U.S. on Kerosene is 40 cents per gallon, while the rate of duty proposed to be levied upon it according to the proposed tariff is only 5 sen per gallon, thus leaving a net margin in our favor of 35 sen. And not only is the rate levied in the U.S., but those of all other countries are to a greater or less degree higher than the

the proposed rate. I therefore submit that the duty proposed by this Govt. may be regarded as light when compared with those of other countries.

I have attempted to show to Y.E. that the proposed duty on Kerosene is not calculated to cause a decrease in the import of that article. I now beg Y.E's. attention to the following remarks as showing that a like duty on Cotton goods imported into this Empire would certainly be very objectionable both in regard to the revenue derivable from Customs duties and the economical requirements of the people. Y.E. is no doubt well aware that the entire supply of Cotton both raw and manufactured, — depended, before the importation of foreign goods upon native growths; a sufficient quantity being formerly raised to meet the requirements of the people; but that this source of supply has since to a great extent been superseded by foreign Cotton goods. Now if a duty were to be levied upon Cotton equal

in

in rate to that proposed upon Kerosene, the consequence would be that foreign cotton would be dearer than the native growth and consequently the people would find themselves placed between the two alternatives of either being compelled to purchase foreign goods at a higher price, or of falling back upon the native production, which in the present conditions is inadequate to meet the demands of the population. The price of the native growth would necessarily also be further enhanced up to the price of the imported article; so that thus this article of prime necessity would for an indefinite period be dearer, while at the same time the revenue would suffer. Lastly if the same duty as the one proposed upon Kerosene were levied upon Cotton, any nation importing Cotton into this country would have good reason to complain that her production was being shut out from the Japanese market by being subjected to a high rate of duty levied expressly by the Japanese Government in order

to

to foster a native industry capable of entering into competition with it, a complaint, which, as I have shown, cannot be made in the case of kerosene. To lay herself open to any such charge is (I wish to state emphatically) opposed to the policy of Japan in the proposals, her sincere desire being to maintain an attitude of justice and impartiality toward all the friendly Powers concerned.

In conclusion I respectfully submit that, in my opinion, any reference to the opinion of the "most favored nation clause" is inappropriate to the present case, the proposed tariff not being framed for the purpose of discriminating, as already explained, against the production; but on the contrary the divergent interests of the several Powers have been carefully and duly weighed, whilst in guarding the interests of this country consideration has been paid solely to economical and financial requirements actually existing.

I avail myself &c &c

(Sgd.) Inouye Kaoru

H. I. J. M's Minister for Foreign Affairs.

No 1151.

Enclosure 2.

Copy.

No 1275.

United States Legation,
Tokei, July 21, 1880.

H. E. Inouye Kaoru,
H. I. J. Ms. Minister for Foreign Affairs,
Sir:

I have the honor to acknowledge the receipt of Y. E.'s note of date the 12th instant, in which you make reply to the protest which I respectfully made to H. I. J. Ms. Govt. on the 24th of April last against the proposed discrimination against a production of the United States in the tariff project which you were pleased to submit to me.

I beg leave to say, with entire respect for your opinions as expressed in your note, that I fail to perceive any good reason for the discrimination against the United States which Y. E.'s

Gov't.

Gov't. has made in your tariff project. Admitting your conclusion, the correctness of which I am constrained to doubt, that the excessive duty which Y.E. proposes to levy upon Kerosene oil will not so diminish its consumption and sale in Japan, I do not doubt that it will greatly diminish the profits of the producers and importers thereof to Japan precisely as a like duty imposed upon British cotton yarn and fabrics would greatly diminish the profits of the producers and importers thereof to Japan.

I pray Y.E. to reconsider this matter and weigh well my former statement, that my Gov't. asks no tariff discriminations in favor of American productions which may be deemed necessary and essential to the people of Japan, but simply asks that no discriminations be made against such productions and in favor of the productions of any other country which may be deemed

to

be necessary and essential to the people of Japan.

Accept, Sir, &c &c

(Sgd.) Jno. A. Bingham

No 1152.

DEPARTMENT OF STATE
AUG 27 1880
RECEIVED

United States Legation,
Japan,
Tokei, July 23, 1880.

Mr Bingham
to the
Hon Secretary of State.

Subject.

Mr Inouye asks Mr Bingham's opinion as to the course this Government should pursue in negotiations as to the proposed treaties. Mr Bingham advises separate negotiations with Foreign Powers.

Enclosures.

1. Mr Inouye to Mr Bingham, July 15/80
2. Mr Bingham to Mr Inouye, " 23 "

No 1152.

United States Legation,
Japan,
Tokei, July 23, 1880.

Hon William M. Evarts,
Secretary of State,
Washington, D.C.

Sir:

Referring to my No 1144 wherein I transmitted for your information copies of a proposed treaty of friendship and also a propound treaty of commerce and navigation, together with a copy of observations thereon which were communicated to me by this Government, I now beg leave to acquaint you that on the 15th instant

instant I received from Mr. Inouye, the Minister for Foreign Affairs, a communication in relation thereto, a copy of which is herewith

1/1152 enclosed.

In his communication the Minister is pleased to request my opinion of the course proper to be pursued in conducting negotiations in relation to the proposed treaties, and takes occasion to say that "His Majesty's Govern-
"ment was deeply moved by the
"spirit of good friendship mani-
"fested towards Japan" by our Government in the negotiation of the Treaty of July 25, 1878, in compliance with the desire of His Majesty's Government.

It

It seemed to me advisable to give to Mr Inouye my opinion as requested, and accordingly replied to his communication by a note of current date, a copy of which I have the honor to enclose.

2/1152

In my reply you will please notice that I remind His Excellency that I had already made known to him that under my instructions I could not at present enter into any negotiations concerning treaty revision, not participate in any joint conference on that subject with the other Foreign Representatives, and therefore could do no more than give my opinion as requested as to the best course of procedure

in

in conducting negotiations on the proposed treaty projects.

My opinion as given to Mr Inouye is to the effect that separate negotiations with each of the other Foreign States is most advisable for the reasons stated in my reply.

Trusting that my action may command your approval,

I have the honor to be,

Sir,

Your obedient servant,

Wm A Bingham

No 1152.

Enclosure 1.

Copy.

No 25.

Foreign Office. Tokio,
the 15th the 7th month
the 13th year Meiji.

H. E. John A. Bingham,
Envoy Extraordinary and Minister
Plenipotentiary of the U.S.A.

Sir:

A few days since I had the honor of forwarding to Y.E. a draft of a treaty of Friendship and a memorandum to be annexed thereto, and certain observations upon the same, together with a draft of a treaty of Commerce and Navigation prepared by my Government.

Regarding the revision of the treaty negotiations were opened between the Government of the United States and that of Japan, in compliance with the desire of my Government, and these negotiations resulted in a new treaty

the two countries concluded and signed at Washington July 25, 1878. His Majesty's Government was deeply moved by the spirit of good friendship manifested toward Japan by Your Excellency's Government. Certain subjects, however, were omitted from the stipulations of that treaty, as will be observed by reference to the aforesaid drafts forwarded to Your Excellency, and it was therefore deemed advisable to again open negotiations, as I explained to Your Excellency in person at our last interview. I request that you will kindly consider and indicate to me your opinion as to what course it would be best to pursue in conducting again the negotiations on the subject.

I avail myself &c. &c.

(Sgd.) Inouye Kaoru

H. I. J. M's Minister for Foreign Affairs.

No 1152.

Enclosure 2.

Copy.

No 1280.

United States Legation,
Tokei, July 23, 1880.

H. E. Inouye Kaoru,
H. I. J. M's. Minister for Foreign Affairs,
Sir:

I have the honor to acknowledge the receipt of Y.E's. note of date the 15th inst., wherein, referring to the drafts of proposed treaties and an accompanying memorandum, which you did me the kindness to send to me, Y.E. is pleased to say that "His Majesty's "Government was deeply moved by the "spirit of good friendship manifested toward "Japan by the Government of the United "States" in the negotiation of the treaty of 1878, and you do me the honor to request that I should indicate to Y.E. my "opinion as to what course it would "be best to pursue in ageins conducting

"the negotiations on the subject."

In reply I beg leave to remind Y.E. that I have heretofore made known to you that under the instructions of my I cannot at present enter into any negotiations concerning treaty revision, nor participate in any joint conference on the subject with the other Foreign Representatives accredited to H.I.J. M's Govt., and therefore I cannot do more than give it as my opinion that it is of the utmost importance to Y.E. Government that you should conduct your negotiations separately with the other Foreign Powers in relation to any treaty revision or treaty negotiations which Y.E. desires to make with either of them. It is obvious that Y.E.'s Govt. has the indisputable right to negotiate separately with each and every Foreign Power, and it also obvious that to submit your proposed measures to the Representatives of the Foreign Powers jointly is to put it in the power of a majority of the Foreign Representatives to defeat

and prevent the acceptance by the Foreign Powers jointly represented in such conference of any treaty Y.E. may propose; and I may add that it might be insisted in such conference that so long as any one of the Powers represented therein objected no final agreement could be reached.

The equality of nations before the law is a principle asserted and acted upon by all Western States, and to no Govt. is the observance of this principle more essential than to that of Japan; and therefore it is my opinion that the only safe & politic course for Y.E's. Govt. in the premises is to conduct all your treaty negotiations hereafter separately with the Foreign States, thereby following the rule so wisely acted upon by Y.E's Govt. in its recent negotiation with the United States.

Accept, Sir, the renewed &c. &c.

(Sgd.) Jno. A. Bingham

No 1153. Japan S Forestry Aug 31. 1880 Mr Williams

ack

Mr Adee



United States Legation,

Japan,

Tokei, July 23, 1880.

Mr Bingham

to the

Hon. Secretary of State.

Subject.

Enclosing copy of the notification of the Japanese Government to prevent collisions at sea.

Enclosures.

Duplicate copy of the notification as published in the Japan Daily Mail July 23, 1880.

No 1153.

United States Legation,
Japan,
Tokei, July 23, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

1/ Herewith I beg leave to enclose a translation in duplicate, as published in the Japan Daily Mail of this date, of Notification No 35 of the Daijokuan, or Imperial Council of His Majesty the Emperor of Japan "for preventing collisions "at sea." This notification was duly certified to me by His Excellency Mr Inouye on the 19th

19th instant.

I understand that the provisions thus adopted by this Government are in general accord with the rules of the sea as accepted by Western maritime nations.

I have the honor to be,

Sir,

Your obedient servant,

Wm. L. Dayton

No 115-3.

Enclosure.

Extract from the Japan Daily Mail. July 23, 1880.

[TRANSLATION.]

NOTIFICATION No. 35, OF DAIJOKWAN.

16th day, 7th month, 18th year of Meiji.

THE FOLLOWING REGULATIONS for the Prevention of Collisions at Sea, shall come into operation on and after the 1st day of the 9th month of the present year, and the existing Regulations (Notification of Daijokwan, No. 5 of the 7th year of Meiji) are, on and after the beforenamed date, hereby annulled.

(Signed.) TARUHITO SHINNO,
Sa-Daijin.

REGULATIONS

FOR

PREVENTING COLLISIONS AT SEA.

PRELIMINARY.

Art. 1. In the following rules every steamship which is under sail and not under steam, is to be considered a sailing ship, and every steamship which is under steam, whether under sail or not, is to be considered a ship under steam.

RULES CONCERNING LIGHTS.

Art. 2. The lights mentioned in the following Articles, numbered 3, 4, 5, 6, 7, 8, 9, 10, and 11, and no others, shall be carried in all weathers from sunset to sunrise.

Art. 3. A sea-going steamship, when under way, shall carry:

(*a.*) On or in front of the foremast, at a height above the hull of not less than 20 feet, and if the breadth of the ship exceeds 20 feet, then at a height above the hull not less than such breadth, a bright white light, so constructed as to show an uniform and unbroken light over an arc of the horizon of 20 points of the compass; so fixed as to throw the light 10 points on each side of the ship, viz., from right ahead to two points abaft the beam on either side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles.

(*b.*) On the starboard side, a green light so constructed as to show an uniform and unbroken light over an arc of the horizon of 10 points of the compass; so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles.

(*c.*) On the port side, a red light, so constructed as to show an uniform and unbroken light over an arc of the horizon of 10 points of the compass; so fixed as to throw the light from right ahead to two points abaft the beam on the port side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles.

(*d.*) The said green and red side-lights shall be fitted with inboard screens projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

Art. 4. A steamship, when towing another ship, shall, in addition to her side-lights, carry two bright white lights in a vertical line one over the other, not less than three feet apart, so as to distinguish her from other steamships. Each of these lights shall be of the same construction and character, and shall be carried in the same position, as the white light which other steamships are required to carry.

Art. 5. A ship, whether a steamship or sailing ship, when employed either in laying or in picking up a telegraph cable, or which from any accident is not under command, shall at night carry in the same position as the white light which steamships are required to carry, and, if a steamship, in place of that light, three red lights in globular lanterns, each not less than 10 inches in diameter, in a vertical line one over the other, not less than three feet apart; and shall by day carry in a vertical line one over the other, not less than three feet apart, in front of but not lower than her foremast head, three black balls or shapes, each two feet in diameter. These shapes and lights are to be taken by approaching ships as signals that the ship using them is not under command, and cannot therefore get out of the way. The above ships, when not making any way through the water, shall not carry the side-lights, but when making way shall carry them.

Art. 6. A sailing ship under way, or being towed, shall carry the same lights as are provided by Article 3 for a steamship under way, with the exception of the white light, which she shall never carry.

Art. 7. Whenever, as in the case of small vessels during bad weather, the green and red side-lights cannot be fixed, these lights shall be kept on deck, on their respective sides of the vessel, ready for use, and shall, on the approach of or to, other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side nor the red light on the starboard side. To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with proper screens.

Art. 8. A ship, whether a steamship or a sailing ship, when at anchor, shall carry, where it can best be seen, but at a height not exceeding 20 feet above the hull, a white light, in a globular lantern, of not less than eight inches in diameter, and so constructed as to show a clear, uniform, and unbroken light, visible all round the horizon at a distance of at least one mile.

Art. 9. A pilot-vessel, when engaged on her station on pilotage duty, shall not carry the lights required for other vessels, but shall carry a white light at the mast-head, visible all round the horizon, and shall also exhibit a flare-up light or flare-up lights at short intervals, which shall never exceed 15 minutes. A pilot-vessel, when not engaged on her station on pilotage duty, shall carry lights similar to those of other ships.

Art. 10. Open fishing boats, and other open boats shall be required to carry the side-lights required for other vessels; but shall, if they do not carry such lights, carry a lantern having a green slide on the one side and a red slide on the other side; and on the approach of or to other vessels, such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side, nor the red light on the starboard side.

Fishing vessels and open boats, when at anchor or attached to their nets, shall exhibit a bright white light.

Fishing vessels and open boats shall, however, not be prevented from using a flare-up in addition, if considered expedient.

Art. 11. A ship which is being overtaken by another shall show from her stern to such last-mentioned ship a white light or a flare-up light.

SOUND SIGNALS FOR FOG, &c.

Art. 12. A steamship shall be provided with a steam whistle or other efficient steam sound signal, so placed that the sound may not be intercepted by any obstructions, and with an efficient fog-horn and also with an efficient bell. A sailing ship shall be provided with a similar fog-horn and bell.

In fog, mist, or falling snow, whether by day or night, the signals described in this article shall be used as follows; that is to say,

(*a.*) A steamship under way shall make with her steam-whistle, or other steam sound signal, at intervals of not more than two minutes, a prolonged blast.

(*b.*) A sailing ship under way shall make with her fog-horn, at intervals of not more than two minutes, when on the starboard tack one blast, when on the port tack two blasts in succession, and when with the wind abaft the beam three blasts in succession.

(c.) A steamship and a sailing ship when not under way shall at intervals of not more than two minutes, ring the bell.

SPEED OF SHIPS TO BE MODERATE IN FOG, &c.

Art. 13. Every ship, whether a sailing ship or steamship, shall in a fog, mist, or falling snow, go at a moderate speed.

STEERING AND SAILING RULES.

Art. 14. When two sailing ships are approaching one another so as to involve risk of collision, one of them shall keep out of the way of the other as follows, viz :—

(a.) A ship which is running free shall keep out of the way of a ship that is close-hauled.

(b.) A ship which is close-hauled on the port tack shall keep out of the way of a ship which is close-hauled on the starboard tack.

(c.) When both are running free with the wind on different sides, the ship which has the wind on the port side shall keep out of the way of the other.

(d.) When both are running free with the wind on the same side, the ship which is to windward shall keep out of the way of the ship which is to leeward.

(e.) A ship which has the wind aft shall keep out of the way of the other ship.

Art. 15. If two ships under steam are meeting end on, or nearly end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other.

This article only applies to cases where ships are meeting end on, or nearly end on, in such a manner as to involve risk of collision, and does not apply to two ships which must, if both keep on their respective courses, pass clear of each other.

The only cases to which it does apply are, when each of the two ships is end on, or nearly end on, to the other, in other words, to cases in which, by day, each ship sees the masts of the other in a line, or nearly in a line, with her own ; and by night, to cases in which each ship is in such a position as to see both the side-lights of the other.

It does not apply by day to cases in which a ship sees another ahead crossing her own course ; or by night, to cases where the red light of one ship is opposed to the red light of the other, or where the green light of one ship is opposed to the green light of the other, or where a red light without a green light, or a green light without a red light, is seen ahead, or where both green and red lights are seen anywhere but ahead.

Art. 16. If two ships under steam are crossing so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other.

Art. 17. If two ships, one of which is a sailing ship and the other a steamship, are proceeding in such directions as to involve risk of collision, the steamship shall keep out of the way of the sailing ship.

Art. 18. Every steamship, when approaching another ship so as to involve risk of collision, shall slacken her speed or stop and reverse, if necessary.

Art. 19. In taking any course authorised or required by these regulations, a steamship under way may indicate that course to any other ship which she has in sight by the following signals on her steam-whistle, viz. :—

One short blast to mean "I am directing my course to starboard."

Two short blasts to mean "I am directing my course to port."

Three short blasts to mean "I am going full speed astern."

The use of these signals is optional ; but if they are used the course of the ship must be in accordance with the signal made.

Art. 20. Notwithstanding anything contained in any preceding Article, every ship, whether a sailing ship or a steamship overtaking any other, shall keep out of the way of the overtaken ship.

Art. 21. In narrow channels every steamship shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such ship.

Art. 22. Where by the above rules one of two ships is to keep out of the way, the other shall keep her course.

Art. 23. In obeying and construing these rules due regard shall be had to all dangers of navigation ; and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger.

NO SHIP, UNDER ANY CIRCUMSTANCES, TO NEGLECT PROPER PRECAUTIONS.

Art. 24. Nothing in these rules shall exonerate any ship, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

RESERVATION OF RULES FOR HARBOURS AND INLAND NAVIGATION.

Art. 25. Nothing in these rules shall interfere with the operation of a special rule, duly made by local authority, relative to the navigation of any harbour, river, or inland navigation.

SPECIAL LIGHTS FOR SQUADRONS AND CONVOYS.

Art. 26. Nothing in these rules shall interfere with the operation of any special rules made by the Government of any nation with respect to additional station and signal lights for two or more ships of war, or for ships sailing under convoy.

No 118-3.

Duplicate Enclosure

Extract from the Japan Daily Mail, July 23/80.

[TRANSLATION.]

TIFICATION No. 35, OF DAIJOKWAN.

16th day, 7th month, 13th year of Meiji.

HE FOLLOWING REGULATIONS for the Prevention of Collisions at Sea, shall come into operation d after the 1st day of the 9th month of the present and the existing Regulations (Notification of Daijo , No. 5 of the 7th year of Meiji) are, on and after eforenamed date, hereby annulled.

(Signed.) TARUHITO SHINNO,
Sa-Daijin.

REGULATIONS
FOR
PREVENTING COLLISIONS AT SEA.

PRELIMINARY.

1. In the following rules every steamship which is under d not under steam, is to be considered a sailing ship, and steamship which is under steam, whether under sail or to be considered a ship under steam.

RULES CONCERNING LIGHTS.

2. The lights mentioned in the following Articles, num- 3, 4, 5, 6, 7, 8, 9, 10, and 11, and no others, shall be in all weathers from sunset to sunrise.

3. A sea-going steamship, when under way, shall carry :

On or in front of the foremast, at a height above the hull not less than 20 feet, and if the breadth of the ship ceeds 20 feet, then at a height above the hull not less an such breadth, a bright white light, so constructed as show an uniform and unbroken light over an arc of the rizon of 20 points of the compass ; so fixed as to throw e light 10 points on each side of the ship, viz., from right ead to two points abaft the beam on either side ; and of ch a character as to be visible on a dark night, with a ar atmosphere, at a distance of at least five miles.

On the starboard side, a green light so constructed as to ow an uniform and unbroken light over an arc of the rizon of 10 points of the compass ; so fixed as to throw e light from right ahead to two points abaft the beam on e starboard side ; and of such a character as to be visible a dark night, with a clear atmosphere, at a distance of least two miles.

On the port side, a red light, so constructed as to show an iform and unbroken light over an arc of the horizon of points of the compass ; so fixed as to throw the light m right ahead to two points abaft the beam on the port e : and of such a character as to be visible on a dark ht, with a clear atmosphere, at a distance of at least o miles.

The said green and red side-lights shall be fitted with board screens projecting at least three feet forward from light, so as to prevent these lights from being seen oss the bow.

Art. 4. A steamship, when towing another ship, shall, addition to her side-lights, carry two bright white lights in a vertical line one over the other, not less than three feet apart, so as to distinguish her from other steamships. Each of these lights shall be of the same construction and character, and shall be carried in the same position, as the white light which other steamships are required to carry.

Art. 5. A ship, whether a steamship or sailing ship, when employed either in laying or in picking up a telegraph cable, or which from any accident is not under command, shall at night carry in the same position as the white light which steamships are required to carry, and, if a steamship, in place of that light, three red lights in globular lanterns, each not less than 10 inches in diameter, in a vertical line one over the other, not less than three feet apart ; and shall by day carry in a vertical line one over the other, not less than three feet apart, in front of but not lower than her foremast head, three black balls or shapes, each two feet in diameter. These shapes and lights are to be taken by approaching ships as signals that the ship using them is not under command, and cannot therefore get out of the way. The above ships, when not making any way through the water, shall not carry the side-lights, but when making way shall carry them.

Art. 6. A sailing ship under way, or being towed, shall carry the same lights as are provided by Article 3 for a steamship under way, with the exception of the white light, which she shall never carry.

Art. 7. Whenever, as in the case of small vessels during bad weather, the green and red side-lights cannot be fixed, these lights shall be kept on deck, on their respective sides of the vessel, ready for use, and shall, on the approach of or to, other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side nor the red light on the starboard side. To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with proper screens.

Art. 8. A ship, whether a steamship or a sailing ship, when at anchor, shall carry, where it can best be seen, but at a height not exceeding 20 feet above the hull, a white light, in a globular lantern, of not less than eight inches in diameter, and so constructed as to show a clear, uniform, and unbroken light, visible all round the horizon at a distance of at least one mile.

Art. 9. A pilot-vessel, when engaged on her station on pilotage duty, shall not carry the lights required for other vessels, but shall carry a white light at the mast-head, visible all round the horizon, and shall also exhibit a flare-up light on flare-up lights at short intervals, which shall never exceed 15 minutes. A pilot-vessel, when not engaged on her station on pilotage duty, shall carry lights similar to those of other ships.

Art. 10. Open fishing boats, and other open boats shall be required to carry the side-lights required for other vessels ; but shall, if they do not carry such lights, carry a lantern having a green slide on the one side and a red slide on the other side ; and on the approach of or to other vessels, such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side, nor the red light on the starboard side.

Fishing vessels and open boats, when at anchor or attached to their nets, shall exhibit a bright white light.

Fishing vessels and open boats shall, however, not be prevented from using a flare-up in addition, if considered expedient.

Art. 11. A ship which is being overtaken by another shall show from her stern to such last-mentioned ship a white light or a flare-up light.

SOUND SIGNALS FOR FOG, &c.

Art. 12. A steamship shall be provided with a steam whistle or other efficient steam sound signal, so placed that the sound may not be intercepted by any obstructions, and with an efficient fog-horn and also with an efficient bell. A sailing shall be provided with a similar fog-horn and bell.

In fog, mist, or falling snow, whether by day or night, the signals described in this article shall be used as follows ; that is to say,

(a.) A steamship under way shall make with her steam-whistle, or other steam sound signal, at intervals of not more than two minutes, a prolonged blast.

(b.) A sailing ship under way shall make with her fog-horn, at intervals of not more than two minutes, when on the starboard tack one blast, when on the port tack two blasts in succession, and when with the wind abaft the beam three blasts in succession.

(*c.*) A steamship and a sailing ship when not under way shall at intervals of not more than two minutes, ring the bell.

SPEED OF SHIPS TO BE MODERATE IN FOG, &c.

Art. 13. Every ship, whether a sailing ship or steamship, shall in a fog, mist, or falling snow, go at a moderate speed.

STEERING AND SAILING RULES.

Art. 14. When two sailing ships are approaching one another so as to involve risk of collision, one of them shall keep out of the way of the other as follows, viz :—

(*a.*) A ship which is running free shall keep out of the way of a ship that is close-hauled.

(*b.*) A ship which is close-hauled on the port tack shall keep out of the way of a ship which is close-hauled on the starboard tack.

(*c.*) When both are running free with the wind on different sides, the ship which has the wind on the port side shall keep out of the way of the other.

(*d.*) When both are running free with the wind on the same side, the ship which is to windward shall keep out of the way of the ship which is to leeward.

(*e.*) A ship which has the wind aft shall keep out of the way of the other ship.

Art. 15. If two ships under steam are meeting end on, or nearly end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other.

This article only applies to cases where ships are meeting end on, or nearly end on, in such a manner as to involve risk of collision, and does not apply to two ships which must, if both keep on their respective courses, pass clear of each other.

The only cases to which it does apply are, when each of the two ships is end on, or nearly end on, to the other, in other words, to cases in which, by day, each ship sees the masts of the other in a line, or nearly in a line, with her own; and by night, to cases in which each ship is in such a position as to see both the side-lights of the other.

It does not apply by day to cases in which a ship sees another ahead crossing her own course; or by night, to cases where the red light of one ship is opposed to the red light of the other, or where the green light of one ship is opposed to the green light of the other, or where a red light without a green light, or a green light without a red light, is seen ahead, or where both green and red lights are seen anywhere but ahead.

Art. 16. If two ships under steam are crossing so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other.

Art. 17. If two ships, one of which is a sailing ship and the other a steamship, are proceeding in such directions as to involve risk of collision, the steamship shall keep out of the way of the sailing ship.

Art. 18. Every steamship, when approaching another ship so as to involve risk of collision, shall slacken her speed or stop and reverse, if necessary.

Art. 19. In taking any course authorised or required by these regulations, a steamship under way may indicate that course to any other ship which she has in sight by the following signals on her steam-whistle, viz. :—

One short blast to mean "I am directing my course to starboard."

Two short blasts to mean "I am directing my course to port."

Three short blasts to mean "I am going full speed astern."

The use of these signals is optional; but if they are used the course of the ship must be in accordance with the signal made.

Art. 20. Notwithstanding anything contained in any preceding Article, every ship, whether a sailing ship or a steamship overtaking any other, shall keep out of the way of the overtaken ship.

Art. 21. In narrow channels every steamship shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such ship.

Art. 22. Where by the above rules one of two ships is to keep out of the way, the other shall keep her course.

Art. 23. In obeying and construing these rules due regard shall be had to all dangers of navigation; and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger.

NO SHIP, UNDER ANY CIRCUMSTANCES, TO NEGLECT PROPER PRECAUTIONS.

Art. 24. Nothing in these rules shall exonerate any ship, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

RESERVATION OF RULES FOR HARBOURS AND INLAND NAVIGATION.

Art. 25. Nothing in these rules shall interfere with the operation of a special rule, duly made by local authority, relative to the navigation of any harbour, river, or inland navigation.

SPECIAL LIGHTS FOR SQUADRONS AND CONVOYS.

Art. 26. Nothing in these rules shall interfere with the operation of any special rules made by the Government of any nation with respect to additional station and signal lights for two or more ships of war, or for ships sailing under convoy.

No 1154.

DEPARTMENT OF STATE
AUG 27 1880
RECEIVED

United States Legation,

Japan,

Tokei, July 24, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

Acknowledging the receipt of Instructions Nos. 510 - 515, inclusive, and of six copies of the Foreign Relations.

No 1154.

United States Legation,
Japan,
Tokei, July 24, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

I have the honor to acknowledge the receipt of Instructions numbered 510, 511, 512, 513, 514 and 515, and also of six copies of the Foreign Relations for 1879 for which I beg you to accept my thanks.

I have the honor to be,
Sir,
Your obedient servant,
M. A. Bingham

No 1156 Ackd. by Dept of State. O'Connor, 1 passenger reported Sept. 14, 1880 Alb. Crist Ex.

Examiner of Claims
Case of Ross, Ida

Mr O'Connor
United States Legation, Adel
Japan,
Tokei, July 24, 1880.

Mr Bingham
to the
Hon Secretary of State.

Subject.

The application by Mr Hill, of counsel for Ross, to Mr Bingham for an appeal to the Circuit Court of the U.S. for the District of California. Mr Bingham refused the application for reasons stated herein and in the enclosure herewith.

Enclosures.

1. Mr Bingham to Mr Hill, July 7 1880.

2.

2. Final pidgment in re U.S. of America
against John Martin Roll June 21/80.

No 1155.

United States Legation,
Japan,
Tokei, July 24, 1880.

Hon William M. Evarts,
Secretary of State,
Washington, D.C.

Sir:

Referring to my No 1123 of date the 21st of May last and my subsequent despatches in relation to the trial and conviction before Mr Consul General Van Buren of John Martin Ross, an American seaman, of the murder on the 9th of that month of Robert Kelly, the 2d officer of the American merchant ship "Bullion" on board thereof

thereof and when the same was in the harbor of Yokohama, I beg leave to inform you that on the 16th of June last Mr G. D. Hill, of counsel for the accused on said trial, addressed to me a petition for appeal, in which he prayed for an appeal to the Circuit Court of the United States for the District of California from the judgment rendered therein by the United States Consular General Court at Kanagawa. On the 17th instant I disallowed the petition of Mr Hill for the reasons stated in my communication to him of that date, a copy of which I have the honor

1/1155

to

to enclose herewith.

As stated in my letter to Mr Hill, the conviction in the case was entered and concurred in by the Consul General and his four associates on the 21st of May last, and was not approved by me until the 22d of that month, and therefore under section 1102 there was no conviction in fact & in law of the accused until the 22d of May inasmuch as by that section it is Expressly declared that "no person shall be "convicted" in the Consular Court "of a capital offence unless "the Consul and his associates "in the trial all concur in "opinion and the Minister also

approves

"approves of the conviction".

I further called Mr Mills's attention to the fact that by section 1106 — (United States Revised Statutes 1878) it is provided that the Consul "shall give judgment in the case", which of necessity the Consul could not do until after my approval of the conviction was duly certified to him and made part of his record, which having been done the Consul General did thereafter, towit: on the 21st of June last, "give judgment in the case" as required by law; and that this judgment became final by reason of the fact that the associates had concurred with the Consul in the opinion that the accused was guilty as charged in the complaint

complaint and I had approved said conviction & finding.

I also pointed out to Mr Hill that by said section 4106 it is provided that it is only when "any of the associates disagree in "opinion from the Counsel" the case "together with the evidence "and the opinions shall be referred "to the Minister for his adjudication, "either by entering up judgment "therein & remitting the same to "the Counsel with instructions,"— and that it is only in case of such difference that I could have jurisdiction to give judgment in the case, and hence the motion made by Mr Hill for appeal to the Minister in Japan,

as

as appears in the Consular Court record, on the 21st of May, was properly disallowed by the Consul General, inasmuch as there was then no final judgment in the case, nor had I any power to revoke my own approval of the conviction, as under the land and Court Regulations it remained after such approval for the Consul General to either set aside the verdict of conviction and grant a new trial or to enter final judgment in the case.

I also called Mr Hall's attention to the fact that under section 4295 (United States Revised Statutes 1878) an appeal lies to the Circuit Court of the United

United States for the District of California only "on a final "judgment of the Minister to "China & to Japan given in the "exercise of original & appellate "criminal jurisdiction". In this case I had no power to render a final judgment for the reasons above stated, and in fact rendered no final judgment therein, therefore there was no final judgment rendered by me in the case to appeal from to the Circuit Court, and, as the record and judgment remained in the Consular Court, the application made to me for appeal to the Circuit Court was disallowed.

disallowed, it having no jurisdiction on appeal from the final judgment of the Consul General. The conviction became final by my approval and the final judgment of the Consul General in the case after such approval and with the concurrence of the associates is, in my opinion, final under the statute.

2/1155

I enclose a copy of the record of the final judgment rendered in this case by the Consul General as certified by him to me.

I have the honor to be, sir,

Your obedient servant,

John A. Bingham

No 1155

Enclosure 1.

Copy.

No 924.

United States Legation,
Tokei, July 7, 1880.

G. W. Hill Esq
Yokohama.

Sir:

Referring to your note of the 16th ultimo with its enclosures in relation to the case of the United States of America against John Martin Ross, an American seaman recently tried, convicted and sentenced in the United States Consular General Court upon a charge of the murder on board of the American

merchant vessel "Bullion," when in the harbor of Yokohama, of Robert Kelly, the 2d mate of said vessel, I have to say that I have carefully considered your petition for appeal, therein made, to the Circuit Court of the U.S. for the District of California from the judgment rendered in the case before the Consular General Court of the U.S. in Kanagawa.

As you are aware, the conviction in this case was on the 21st of May last concurred in by the Consul General and the four associates, duly selected and qualified, who sat with him on the trial; and said conviction was on that day duly certified to me and was approved by me on the 22d of May last, under section

4102 Revised Statutes, and afterwards, viz: on the 21st of June, Mr Consul General Van Buren gave finial judgment in the case under section 4106 Revised Statutes.

It appears by the record that on the 21st of May you on behalf of the accused gave notice and moved in the Consular General Court for an appeal to the U.S. Minister, and that on that day the appeal was disallowed by the Consul General.

Permit me to say that under the statute this case, being a capital one, there could be no conviction of the prisoner unless the U.S. Minister in Japan approved thereof; and as I had not approved of this conviction

on the 21st of May there was not and could not have been a final judgment therein on that day by the Consular General Court to appeal from (see section 4102 Revised Statutes).

I have further to remark that, in my opinion, under section 4106 Revised Statutes, the concurrence of the associates with the Consul General in the conviction of the accused, and the same having been approved by me on the 22d of May, the conviction & finding could not thereafter be reversed by me on appeal, and it remained for the Consul General, as required by said section, to give final judgment in the

case, which final judgment therefore was given by him on the 21st of June last, as before stated. No appeal lies in this case from the final judgment by the Consul General to the Circuit Court of the U.S. for the District of California. An appeal lies to that Court in criminal cases tried in Japan only from a "final judgment" of the U.S. Minister therein "given in the "Exercise of his original & appellate "jurisdiction" (Section 4095 U.S. Revised Statutes). My approval of the conviction & finding was in no sense a final judgment, as that approval did not determine the case; in fact it remanded

for the Consul General thereafter to pronounce finial judgment under section 1106, & to set aside the conviction and grant a new trial under the Consular Court Regulations.

The Consul General having lawfully taken original jurisdiction in this case by the express provision of section 1106 Revised Statutes, I could not give a finial judgment therein unless one or more of the associates had "differed in opinion "from the Consul General" and the case "without further proceedings "together with the evidence and opinions" had been referred to me "for ad- "judication" as required by that section. It is clear to my mind

that it is only when such difference occurs on the trial of a capital case in the Consular Court, and the case by reason thereof is referred to me for adjudication, that I can enter up judgment therein as provided in said section.

From a judgment rendered by me when the case is thus referred to me "for adjudication", as provided in the section referred to, I have no doubt an appeal would lie to the Circuit Court of the U.S. for the District of California. The words in this section "if "the Consul General and his "associates concur in opinion "the decision must in all

"cases except of capital offences
"be final", must, I think, be
construed to mean that in
capital cases the finding &
opinion in which the Council
and his associates concur, as
provided in section 4102, shall
be final if the Minister also
approves such finding &
conviction, as is provided in
said section 4102, after which
approval of the conviction &
verdict by the Minister "the
"Council shall give judgment
"in the case", as provided in
section 4106, and this having
been done by the Council, as
herein stated, is the final
judgment in the case.

I have no authority to order & grant an appeal, as prayed by you, from the judgment of the Consular General Court to the Circuit Court of the United States for the District of California, and therefore your request is refused. I have given no finial judgment in the case, therefore there can be no appeal from any action taken by me therein. The original record in the case rightfully remains in the Consular General Court. The execution of sentence has been postponed by me under section 1103, and the case has

been submitted by me to the Department of State for consideration.

I am, Sir,

Your obedient servant,

Sgd. Jno. A. Bingham

No 1155.

Enclosure 2.

Copy.

In the U.S. Consular Court
at Kanagawa, Japan.

The United States of America
against
John Martin Ross

June 21st 1880. Present Thos. B. Van Buren Esq. Consul General, and Messrs F. E. Foster, O. Keil, F. H. Olmstead and E. H. R. Manley, Associates.

The prisoner having been brought into Court, his counsel also being present, the following proceedings

are had.

The prisoner John Martin Ross, being made to stand up, is addressed as follows by the Consul General in presence of his associates on the bench —

"Prisoner you were duly convicted in this Court, as has already been announced to you, on the 20th day of May last past of the murder of Robert Kelly in manner and form as charged in the complaint filed against you. I have now to inform you that said conviction was duly approved by the Hon. John A. Bingham, Envoy Extraordinary and Minister Plenipotentiary of the United States of America in Japan, on the 22d of said month of May, of which

approval and official notification has been furnished me, and in accordance with the opinion of said Minister, that sentence should be passed upon you, after such approval of the said conviction by him, the Court will now proceed to pass such sentence. Have you anything to say why sentence of death should not be pronounced against you?" = The prisoner says he has no recollection of the act at all =

The sentence was then duly passed upon the prisoner in open Court in his presence and in the presence of the associates, as follows:-

"John Martin Ross the sentence of the Court is that you suffer death in such manner, time and place as the U.S. Minister in Japan may

direct in accordance with law

(Sgd.) Thos. B. Van Buren
Consul General

I concur F. E. Foster,
" " A. Keil,
" " F. H. Olmstead,
" " E. H. R. Manley,
Assistants

U.S. Consular General Court at Kanagawa, Japan.

I hereby certify that the foregoing is a true, full and correct copy in the proceedings in the case of the U.S. of America against John Martin Ross, convicted of murder in this Court on the 20th of May last, which have taken place in this Court since the approval of said conviction by the U.S. Minister in Japan including the sentence this day passed upon the said prisoner.

Seal

(Sgd.) Thos. B. Van Buren
Consul General

No 1156.



United States Legation,

Japan,

Tokei, July 24, 1880.

Mr Bingham

to the

Hon. Secretary of State.

Subject.

Enclosing duplicate accounts for the Quarter ending June 30, 1880.

Enclosures.

Statement of account, abstract of contingent Expenses, two vouchers and exchange certificate.

M

No 1156.

United States Legation,
Japan,
Tokei, July 24, 1880.

Hon William M. Evarts,
Secretary of State,
Washington, D.C.

Sir:

I have the honor to transmit herewith a duplicate of my account for salary and contingent expenses for the Quarter ending the 30th June last, with two vouchers for contingencies and the banker's certificate of exchange, which last shows that for my salary draft (£616-9-2) and for my draft for contingencies (£35-19-2)

I

I received the equivalent of
three thousand dollars ($3000.00)
and One hundred and seventy five
dollars ($175.00), respectively, United
States gold and no more.

I have the honor to be,

Sir,

Your obedient servant,

Jno. A. Bingham

Instruction to Mr. Bingham pat. 1 vol. bks 150 pages. misc. - Sept. 6, 1880. Mr. Cridler

To Morton Rose & Co Sept 11-80 misc

No 115.

Mr Adee



United States Legation,

Japan,

Tokei, July 24, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

Mr Bingham gives as reason for requesting the increase of the Legation contingent fund the additional Expense caused by the transmission of correspondence, parcels &c. to Consuls in Japan, China &c.

Mr Hay

This increase is reasonable and proper, being in consequence of the instructions of the Dep't, and as the allowance is entirely discretional with the Secy it may be made, if it has not already been.

ada

Dip. Bureau

Instruct

Consul Offices

$1,500.00

Hay

No 115.

United States Legation,

Japan,

Tokei, July 24, 1880.

Hon William M. Evarts,

Secretary of State,

Washington D.C.

Sir:

Referring to Instruction No 507 of date the 18th of May last, in relation to the suggestion made in my No 1097 for an increase of One hundred dollars ($100.00) per annum of the contingent fund of this Legation for the transmission of mails sent hither for our Consulates &c. in Japan, China, Siam &c., I beg leave to say that a reference to

the

the itemized account for postal charges which I had the honor to transmit with my No 1156 enclosing my duplicate account for the Quarter ended June 30, 1880, will show that on account of the Consular matter so transmitted to my care the postal charges for that Quarter, on account of the transmissal thereof by me, amounted to Forty eight dollars ($48.00) which being repeated for each Quarter will amount to a sum total for the year of One hundred and ninety two dollars ($192.00).

As I have before acquainted you, without this additional Expense of forwarding the official correspondence &c. of the

Department

Department to our Consuls in the East. I have been careful, as a general rule, not to expend the entire amount of the contingent allowance to this Legation.

I have the honor to be,

Sir,

Your obedient servant,

Jno. A. Kingman

Ack
Wm Adee

No 1158.



United States Legation,

Japan,

Tokei, July 24, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

The propositions given by the Japanese Govt. in confidence to the Foreign Representatives were published in the Japan Daily Herald. Mr Bingham comments upon this wanton violation of the wishes of this Government, and encloses a copy of an article from the Herald attacking the United States and Japan for having made the treaty

of 1878.

Enclosure.

Extract from the Japan Daily Herald.

July 21, 1880.

No 115-8.

United States Legation,
Japan,
Tokei, July 24, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

Herewith I beg leave to enclose for your information an article which appeared in the Japan Daily Herald of the 21st instant by way of apology for the publication by that journal a few days previous without the knowledge or consent of His Imperial Japanese Majesty's Government of substantial copies of the two proposed treaties of

Friendship

Friendship and of Commerce and Navigation, with official observations accompanying the same, which had been recently confidentially communicated to the Foreign Representatives by the Minister for Foreign Affairs for their consideration and the consideration of their respective Governments, copies of which I had the honor to transmit in my No 1144.

In my opinion this apology is alike offensive and impotent. It is difficult to deal calmly with the flagitious impertinence of this editor, who first obtains surreptitiously the copies of the treaties and observations and publishes them without the consent

of

of this Government and against its wishes, and officiously undertakes to instruct the Foreign Representatives of their duties and the Japanese Government as well of its rights. It is, it seems according to this astute editor, a crime for Japan and the United States to negotiate a treaty secretly and without consulting all the other Powers. It is not surprising that the editor should attempt, as he does, to justify this insolent and malevolent aspersion upon the two Governments by falsely assuming, as he does, that the other Representatives were not furnished by this Government as they were, with substantially the same proposition with which I had

had been furnished and which I had the honor to transmit to the Department. It would have manifested a much higher quality if the editor of the Herald had told the public by what means he became possessed of these private communications of this Government which he has published without its knowledge & consent.

I may add that His Majesty's Government has addressed a note through me to all the Foreign Representatives, acquainting them that these papers were submitted not to the public, but to them, and were published without the Government's knowledge & consent.

J

I have the honor to be,

Sir,

Your obedient servant,

Jno. A. Bingham

No 1158.

Enclosure.

Extract from the Japan Daily Herald - July 21, 1880

If the very obvious considerations to which we adverted the other day were not in themselves sufficiently weighty to have restrained any foreign Minister in Japan from lending himself to the secret designs of the Government with respect to treaty revision, the not remote surreptitious proceedings of the Government, are fresh in memory. At a time when the whole question was pending, and the Representatives of the foreign Powers had reason to believe they all stood on an equal footing, and were being treated exactly alike, - as indeed they had a right to be,—secret negotiations were pending with America for the revision of the treaty with that Power, of which only one Minister was permitted to have knowledge, viz., the present *Doyen*, Mr. Bingham. The outcome of which illicit intrigue,—for we cannot better designate the transaction,—was that a convention, revising and altering the treaty now in operation between Japan and the United States, was concluded on the 25th July, 1878, and proclaimed by the President on the 8th April, 1879, and the full text of which was published in the *Herald* in May last. This procedure was, from its first inception, an act of bad faith to the other Powers having treaties with this country, and more especially was such the case with the other co-signatories of the Yedo Convention,—Great Britain, France, and Holland,—of the 25th of June, 1866 (which is still in operation). These Powers were entitled to notice from both Japan and America, of alterations of duties, which, under the secret system which appears to be so much in vogue here, they never got. This act of *mala fides* on the part of America and Japan stands recorded, and, so far as we know, has never been either justified or condoned. It so happens that the American Convention has never come into force, owing to the fact that it contained a clause by which it was to come into operation only when other Powers had concluded similar treaties,—a contingency which has not yet happened, nor is likely to happen.

After such a transaction as that, there seems to be something almost indecent in the Government approaching the Foreign Representatives, and asking them to keep from their nationals in this country what it is so extremely right and proper that they should know. That, under the circumstances of the case, every Minister should at once have scouted such a proposition, we do not for a moment think is open to question. It cannot be pretended, since the proposals were in common, that the basis on which the Government was prepared to negotiate was different, or exceptional, or peculiar in the case of any of the Powers to be treated with. No Minister, then, is in a position to contend that in lending himself to keep secret the Japanese proposals, he was specially serving the country whose interests are confided to his charge. He had every reason, and every rational motive, for refusing to comply with an improper request made by those who, by their action in the case of the negotiations with the United States for treaty revision, had behaved with treachery towards the Ministers of all the other Treaty Powers. It is surprising enough that these patent considerations should not have occurred to all the Foreign Representatives, and that they should not have acted accordingly.

No 1158.

Enclosure (duplicate)

Extract from the Japan Daily Herald, July 21 1880.

If the very obvious considerations to which we adverted the other day were not in themselves sufficiently weighty to have restrained any foreign Minister in Japan from lending himself to the secret designs of the Government with respect to treaty revision, the not remote surreptitious proceedings of the Government, are fresh in memory. At a time when the whole question was pending and the Representatives of the foreign Powers had reason to believe they all stood on an equal footing, and were being treated exactly alike, – as indeed they had a right to be,—secret negotiations were pending with America for the revision of the treaty with that Power, of which only one Minister was permitted to have knowledge, viz., the present *Doyen*, Mr. Bingham. The outcome of which illicit intrigue,—for we cannot better designate the transaction,—was that a convention, revising and altering the treaty now in operation between Japan and the United States, was concluded on the 25th July, 1878, and proclaimed by the President on the 8th April, 1879, and the full text of which was published in the *Herald* in May last. This procedure was, from its first inception, an act of bad faith to the other Powers having treaties with this country, and more especially was such the case with the other co-signatories of the Yedo Convention,—Great Britain, France, and Holland,—of the 25th of June, 1866 (which is still in operation). Those Powers were entitled to notice from both Japan and America, of alterations of duties, which, under the secret system which appears to be so much in vogue here, they never got. This act of *mala fides* on the part of America and Japan stands recorded, and, so far as we know, has never been either justified or condoned. It so happens that the American Convention has never come into force, owing to the fact that it contained a clause by which it was to come into operation only when other Powers had concluded similar treaties,—a contingency which has not yet happened, nor is likely to happen.

After such a transaction as that, there seems to be something almost indecent in the Government approaching the Foreign Representatives, and asking them to keep from their nationals in this country what it is so extremely right and proper that they should know. That, under the circumstances of the case, every Minister should at once have scouted such a proposition, we do not for a moment think is open to question. It cannot be pretended, since the proposals were in common, that the basis on which the Government was prepared to negotiate was different, or exceptional, or peculiar in the case of any of the Powers to be treated with. No Minister, then, is in a position to contend that in lending himself to keep secret the Japanese proposals, he was specially serving the country whose interests are confided to his charge. He had every reason, and every rational motive, for refusing to comply with an improper request made by those who, by their action in the case of the negotiations with the United States for treaty revision, had behaved with treachery towards the Ministers of all the other Treaty Powers. It is surprising enough that these patent considerations should not have occurred to all the Foreign Representatives, and that they should not have acted accordingly.

F.R

No 1139.

Ack

Mr

DEPARTMENT OF STATE
AUG 27 1880
RECEIVED

United States Legation, Mr Adee

Japan,

Tokei, July 24, 1880.

PRINTED.
FOREIGN RELATIONS
1880

Mr Bingham

to the

How Secretary of State.

Subject.

Return of the Emperor from a progress through the western provinces. Enlightened and progressive reign of the Emperor and commendable changes and improvements accomplished since he came to the throne.

1880

No 1159.

United States Legation,
Japan,
Tokei, July 24, 1880.

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

On yesterday His Majesty the Mikado returned to this capital and was received by Her Majesty the Empress, the Imperial Household, the Ministers of State and multitudes of his subjects, having been absent about fifty days on an Imperial progress through the western provinces of the Empire.

This is the third Imperial progress made

made by His Majesty during my service here. It is but the truth of history to say that since his accession to the throne in 1868 this young Emperor, now but twenty eight years of age, and representing the oldest continuous dynasty on earth, a dynasty which antedates the Roman Empire, has, though clothed with Imperial and absolute sovereignty, been constantly mindful of the rights of his people, and, aided by his enlightened advisers, has labored effectively for the promotion of the general welfare, and, to that end, has within his short reign of twelve years abolished the feudal system, emancipated four fifths of his subjects from

feudal

feudal vassalage and made them the possessors of the soil; disarmed a feudal soldiery, numbering probably six hundred thousand men trained to arms; reorganized the order of society; established and equipped an army forty thousand strong and also a navy equal in number and appointments to our own; assured the freedom of conscience; introduced the press, the telegraph, the railway, steam navigation, a general postal and savings system, and, above all, ordained a free system of compulsory education for the instruction of all the children of the Empire, thereby in effect declaring the equality of all before the law and the

right

right of each to the equal protection of the laws. It may be said that seldom, if ever, in the history of civil administration has any other Ruler done so much within so brief a period for the reformation and well being of a people numbering five and thirty millions.

In his long journey his loyal and faithful subjects came out en masse to meet His Majesty and gave every evidence of their affection and reverence for him.

It is apparent that this Emperor, who has so largely incorporated the philosophy of humanity in his laws and administration, is believed by his confiding people to be endowed with something of divineness.

I

I have the honor to be,

Sir,

Your obedient servant,

Wm. A. Bringhurst

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No 1160. | Mr Adee



United States Legation,

Japan,

Tokei, July 26, 1880.

Mr Bingham

to the

Hon Secretary of State.

Subject.

Meeting with Mr Angell,
Mr Swift and Mr Treseott,
Minister and Commissioners to
China.

No 1160.

United States Legation,
Japan,
Tokei, July 26, 1880

Hon William M. Evarts,
Secretary of State,
Washington D.C.

Sir:

It was my good fortune a few days since to meet Mr Angell, Mr Swift and Mr Treacy, our Minister and Commissioners to China, on the way to their post of duty.

They will not, in my opinion, fail to accomplish what is desired in China if success be possible under any circumstances.

While

While but little was said by either of the gentlemen touching the special duty to which they are appointed, I was most favorably impressed with their high characters, their intelligence and their evident desire to conclude a negotiation honorable to the two countries and needful, it seems, to hush clamor and discontent at home and also to secure the continuance of a good understanding and of cordial commercial relations between China and the United States.

I have the honor to be, Sir,

Your obedient servant,

Wm A Pinghem